



143TACD2022

Between:

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Decision on preliminary issue**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against Notices of Amended Assessment to Corporation Tax raised on 4 October 2017 by the Revenue Commissioners (hereinafter the “Respondent”) in relation to the tax years 2014, 2015 and 2016.
2. The oral hearing of the within appeal took place on 8 June 2022 at which a preliminary issue of whether the Appellant had submitted a claim to the Respondent pursuant to section 291A(10) of the TCA1997 arose. The Respondent made an application for the preliminary issue to be determined prior to the hearing of the substantive appeal. Having heard submissions from both Parties, the Commissioner considered that it was appropriate to limit the oral hearing to the issue of whether a claim for relief pursuant to section 291A of the TCA1997 had been submitted by the Appellant and the oral hearing was confined to that matter. At the conclusion of the oral hearing the Commissioner directed the Parties to submit further written submissions specifically dealing only with the

issue of whether a claim had been submitted by the Appellant. The Parties have submitted same.

3. This, therefore, is a determination of a preliminary issue as to whether a claim for relief pursuant to section 291A of the TCA1997 has been submitted by the Appellant for the tax years 2014, 2015 and 2016.
4. The total amount of tax under appeal is €161,849.00.

### Background

5. [REDACTED] (hereinafter the “Appellant”) is [REDACTED]. On 1 January 2014 the Appellant purchased [REDACTED] [REDACTED] (hereinafter the “Partnership”) [REDACTED]. As part of the acquisition the Appellant purchased the goodwill of the Partnership which it asserts consisted of the brand [REDACTED], the service mark and the domain name. The goodwill of the Partnership, the value of which is not at issue in the within determination, was transferred from the Partnership to a newly formed limited company, the Appellant, on 1 January 2014. The goodwill was valued at € [REDACTED]
6. The Appellant submitted a Corporation Tax (hereinafter “CT”) return CT1 (hereinafter a “CT1”) for 2014 to the Respondent on 23 September 2015. The CT1 return for 2014 submitted by the Appellant contained the following relevant details:

Company Accounting Period	01/01/2014 to 31/12/2014
<b>Trade Profits:</b>	
(a) Profits before Capital Allowances	€ [REDACTED]
<b>Capital Allowances:</b>	
(a) Machinery and Plant (including motor vehicles and specified intangible assets)	€ [REDACTED]
(a) Other capital allowances (including patent rights and relief for know-how under Sec. 768 TCA 1997)	€ [REDACTED]
Total Losses appropriate to this trade, before Capital Allowances, in this accounting period	€ 0
<b>Income:</b>	
Sales / Receipts / Turnover	€ [REDACTED]

Receipts from Government Agencies	€ 0
Other Income	€ 0
<b>Trading Account Items:</b>	
Purchases	€ [REDACTED]
Gross Trading Profits	€ [REDACTED]
<b>Expenses and Deductions:</b>	
Salaries / Wages, Staff Costs	€ [REDACTED]
Directors remuneration including fees, bonuses, etc	€ 0
Sub-contractors	€ 0
Consultancy, Professional fees	€ [REDACTED]
Motor, Travel and Subsistence	€ [REDACTED]
Repairs / Renewals	€ [REDACTED]
Interest Payable	€ [REDACTED]
Depreciation, Goodwill/Capital write-off	€ [REDACTED]
Other Expenses [Total]	€ [REDACTED]
<b>Extracts from Adjusted Net Profit / Loss Computations:</b>	
<b>Profit / Loss Per Accounts:</b>	
Profit on ordinary activities before taxation	€ [REDACTED]
<b>Credits:</b>	
(a) Total Gross Professional Services withholding Tax on fee included in panel 2	€ [REDACTED]
(b) Amount of Professional Services Withholding Tax already refunded or offset as part of an interim claim	€ 0
(c) Amount of Professional Services Withholding Tax retained under Sec. 527(3)(a)	€ 0

<b>Assessment to Corporation Tax – Amount Assessable:</b>	
Trading Income	€ ██████████
Total Income	€ ██████████
<b>Taxable Income after Deductions</b>	
Taxable Income	€ ██████████
Corporation Tax @ 12.5%	€ ██████████
<b>Total Credits – Amounts Allowed</b>	
Gross Withholding Tax	€ ██████
Total Credits	€ ██████
<b>Total Payable</b>	€ ██████████

7. The Appellant submitted CT1 returns for the years 2015 and 2016 to the Respondent on 23 September 2016 and 23 September 2017 respectively. In its CT1 return for the year 2016 returned to the Respondent on 23 September 2017 the Appellant indicated that it had an expression of doubt in relation to that return. For both 2015 and 2016 the Appellant claimed capital allowances amounting to € ██████████ under the section “*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*”. The CT1 returns for the years 2015 and 2016 returned a CT liability of €70,817.12 and €44,787.50 respectively.
8. By way of letter dated 23 May 2016 the Respondent informed the Appellant that it had been selected for an aspect query and the Appellant was requested to submit the following records for 2014 within 30 days of that date:
  - a. The full financial statements for the period;
  - b. The full nominal account details for the period;
  - c. Corporation Tax Computation;
  - d. Capital Allowance schedule where applicable;
  - e. All Journal entries.

9. By way of letter dated 15 June 2016 the Appellant responded to the Respondent and submitted, *inter alia*, the following computation of adjusted profits for 2014:

<b>Profit per accounts</b>	€ ██████████
Adjust for:	
Depreciation	€ ██████████
Amortisation of goodwill	██████████
Interest on Taxes	€ ██████████
<b>Adjusted trading Profit/(loss)</b>	€ ██████████
Adjusted trading Profit/(loss)	€ ██████████
Capital allowances	€ ██████████
Taxable Profit	██████████
Tax payable @ 12.5%	€ ██████████
Withholding Tax	€ ██████████
Corporation Tax Payable	€ ██████████

10. The Appellant's letter of 15 June 2016 also contained a capital allowance computation for 2014 as follows:

	Rate %	Cost €	W.D.V 01/01/14 €	Disposals	Additions	Balancing Charge	Allowance €	W.D.V. 31/12/14 €
Goodwill amortisation	20	██████████	0		██████████		██████████	██████████
Laptops x 2	12.5	██████████	0		██████████		██████████	██████████
PCs x 22 + computer software	12.5	██████████	0		██████████		██████████	██████████
Laptops x 1	12.5	██████████	0		██████████		██████████	██████████
	12.5	██████████	0		██████████		██████████	██████████

	12.5	■	0		■		■	■
			0	0	■	0	■	■

11. By letter dated 16 November 2016 the Respondent requested the Appellant to provide valuation reports or calculations to support the original asset valuation of €■ and in response the Appellant submitted a valuation report in relation to the goodwill of the Partnership on 11 January 2017.

12. By letter dated on 19 January 2017 the Appellant wrote to the Respondent stating as follows:

*“■ as a firm has been in existence for ■ years. Since ... ■ the name of the firm has not changed and had not changed for some time prior to that. While partners have come and gone and locations have changed several times, the name was never changed to include individual partners’ names as we have always sought to promote the name and the brand.*

*It is our belief that the Good will is directly attributable to the trade name and the brand and, as such, comes within Section 291A TCA 1997.”*

13. On 9 February 2017 the Respondent wrote to the Appellant stating that it was the Respondent’s view that the goodwill acquired by the Appellant from the Partnership did not fall within the provisions of section 291A of the TCA1997 and set out the reasons for that view.

14. On 2 October 2017 the Respondent wrote to the Appellant:

- i. Noting that the CT1 forms submitted by the Appellant for 2014, 2015 and 2016 claimed an allowance under section 768 of the TCA1997 and stating that, based on the correspondence to that date, it had been determined that the Appellant was not entitled to an allowance pursuant to section 768 of the TCA1997;
- ii. Stating that Notices of Amended Assessments had been raised to reflect that decision; and
- iii. Drawing the Appellant’s attention to section 291A(10) of the TCA1997 and the time limit contained therein which, the letter stated, is strictly adhered to by the Respondent.

15. By way of Notices of Amended Assessment dated 4 October 2017 the Respondent disallowed the claims for relief for the tax years 2014, 2015 and 2016 and set out the following balance of tax payable totalling €161,849:

2014	€41,250.00
2015	€62,906.00
2016	€57,693.00

16. On 18 October 2017 the Appellant wrote to the Respondent stating as follows:

*“Please note that the claim for Capital Allowances on the form CT1 was made under the section ‘Other Capital Allowances (including patent rights and relief for know-how under Section 768 TCA 1997’. Our claim was in respect of ‘Other Capital Allowances’. I think it is clear from the correspondence (particularly your letter of 9 February 2017) and meetings to date what the basis for our claim is...”*

17. By way of Notice of Appeal dated 31 October 2017 the Appellant appealed the Notices of Amended Assessment to Corporation Tax issued by the Respondent on 4 October 2017.

### **Legislation and Guidelines**

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

#### Section 291A of the TCA1997 – Intangible Assets

*“(1)In this section—*

*...*

*“intangible asset” shall be construed in accordance with generally accepted accounting practice;*

*“specified intangible asset” means an intangible asset, being—*

*(a)any patent, registered design, design right or invention,*

*(b)any trade mark, trade name, trade dress, brand, brand name, domain name, service mark or publishing title,*

*...*

*(ca)computer software or a right to use or otherwise deal with computer software other than such software or such right construed in accordance with section 291(3),*

...

*(fa)any application for the grant or registration of anything within paragraphs (a) to (f),*

...

*(l)goodwill to the extent that it is directly attributable to anything within any of paragraphs (a) to (k);*

*“profit and loss account”, in relation to an accounting period of a company, has the meaning assigned to it by generally accepted accounting practice and includes an income and expenditure account where a company prepares accounts in accordance with international accounting standards.*

*(2)Where a company carrying on a trade has incurred capital expenditure on the provision of a specified intangible asset for the purposes of the trade, then, for the purposes of this Chapter and Chapter 4 of this Part—*

*(a)the specified intangible asset shall be treated as machinery or plant,*

*(b)such machinery or plant shall be treated as having been provided for the purposes of the trade, and*

*(c)for so long as the company is the owner of the specified intangible asset or, where the asset consists of a right, is entitled to that right, that machinery or plant shall be treated as belonging to that company.*

*(3)Subject to this section, where for any accounting period a wear and tear allowance is to be made under section 284 to a company which has incurred capital expenditure on the provision of a specified intangible asset for the purposes of a trade carried on by that company, subsection (2) of section 284 shall apply as if the reference in paragraph (ad) of that subsection to a rate per cent of 12.5 were a reference to a rate per cent determined by the formula—*

$$\frac{A}{B} \times 100$$

*where—*



*A is—*

*(a) the amount, computed in accordance with generally accepted accounting practice, charged to the profit and loss account of the company, for the period of account which is the same as the accounting period, in respect of the amortisation and any impairment of the specified intangible asset, or*

*(b) where the period of account beginning in the accounting period is not the same as that accounting period, so much of the amount, so computed and charged in that respect to the profit and loss account of the company for any such period of account, as may be apportioned to the accounting period on a just and reasonable basis taking account of the respective lengths of the periods concerned and the duration of use and ownership of the asset in each of those periods,*

*and*

*B is the actual cost, within the meaning of paragraph (ad) of section 284(2), of the specified intangible asset or, if greater than the actual cost, the value of that asset by reference to which amortisation and any impairment have been computed for the period of account referred to in paragraph (a) or (b).*

*(4)(a) Notwithstanding subsection (3), where a company makes an election under this subsection in respect of capital expenditure incurred on the provision of a specified intangible asset for the purposes of a trade carried on by the company, subsection (2) of section 284 shall apply as if the reference in paragraph (ad) of that subsection to 12.5 per cent were a reference to 7 per cent.*

*(b) An election by a company under paragraph (a) shall—*

*(i) be made in the return required to be made under Chapter 3 of Part 41A for the accounting period of the company in which the expenditure on the provision of the specified intangible asset is first incurred, and*

*(ii) apply to all capital expenditure incurred on the asset.*

*(5)(a) In relation to the activities of a company carried on as part of a trade—*

*(i) the whole of such activities, if any, that—*

*(I) comprise the sale of goods or services which are goods or services that derive the greater part of their value from, or*

*(II) consist of managing, developing or exploiting,*

*a specified intangible asset or specified intangible assets in respect of which allowances under this Chapter have been made to the company, and*

*(ii) such parts of other such activities, if any, being parts that—*

*(I) consist of managing, developing or exploiting such assets, or*

*(II) contribute to the value of goods or services by using such assets,*

*are referred to in paragraph (b) as “relevant activities” and shall be treated for the purposes of the Tax Acts, other than any provisions of those Acts relating to the commencement or cessation of a trade, as a separate trade (in paragraph (b) and subsection (6) referred to as a “relevant trade”) which is distinct from any other trade or part of a trade carried on by the company.*

*(b) For the purposes of treating relevant activities as a separate trade in accordance with paragraph (a), any necessary apportionment shall be made so that income shall be attributed to the relevant trade on a just and reasonable basis and the amount of that income shall not exceed the amount which would be attributed to a distinct and separate company, engaged in the relevant activities, if it were independent of, and dealing at arm’s length with, the company mentioned in paragraph (a).*

*(c) Where the trade of a company consists wholly of the carrying on of relevant activities (within the meaning of paragraph (a)), then the trade shall, for the purposes of subsection (6), be treated as a relevant trade.*

*(6)(a) Subject to paragraphs (b), (ba) and (c), the aggregate amount for an accounting period of—*

*(i) any allowances to be made to a company under section 284 as applied by this section, and*

*(ii) any interest incurred in connection with the provision of a specified intangible asset by reference to which allowances referred to in subparagraph (i) are made,*

*shall not exceed 80 per cent of the amount which would be the amount of the trading income from the relevant trade carried on by the company for that accounting period if no such allowances were to be made to the company and no such interest were to be deducted in computing that income for that accounting period and, for the purposes of this paragraph, the whole or part of any such allowances shall not be allowed for that accounting period and, only if it is then necessary for the purposes of this paragraph, the whole or part of any such interest shall not be deducted for that accounting period.*

*(b)(i) The amount of any allowances which, by virtue of paragraph (a) and, where applicable, paragraph (ba), remains unallowed for an accounting period (in this subparagraph referred to as the "excess amount") shall be carried forward and treated as an allowance within the meaning of paragraph (a)(i) for the succeeding accounting period to be added to the amount of any allowances within that meaning which, subject to paragraphs (a) and (ba), are available for offset against trading income of the relevant trade for that succeeding accounting period and any excess amount in that succeeding accounting period shall, in turn, be carried forward and treated as an allowance within the meaning of paragraph (a)(i) for the next succeeding accounting period to be added to the amount of any allowances within that meaning which, subject to paragraphs (a) and (ba), are available for offset against trading income of the relevant trade for that accounting period and so on for each succeeding accounting period.*

*(ii) The amount of any interest for which relief cannot be given, by virtue of paragraph (a) and, where applicable, paragraph (ba), for an accounting period (in this subparagraph referred to as "excess interest") shall be carried forward and treated as interest within the meaning of paragraph (a)(ii) for the succeeding accounting period to be added to the amount of any interest within that meaning for which relief, subject to paragraphs (a) and (ba), can be given for that succeeding accounting period and any excess interest in that succeeding accounting period shall, in turn, be carried forward and treated as interest within the meaning of paragraph (a)(ii) for the next*

succeeding accounting period to be added to the amount of any interest within that meaning, for which relief, subject to paragraphs (a) and (ba), can be given for that accounting period and so on for each succeeding accounting period.

(ba) Where the relevant trade (referred to in paragraph (a)) carried on by the company for an accounting period comprises relevant activities relating to a specified intangible asset or specified intangible assets the capital expenditure on which asset or assets includes—

(i) capital expenditure incurred by the company before 11 October 2017 (referred to in this paragraph as ‘the earlier period’), and

(ii) capital expenditure incurred by the company on or after 11 October 2017 (referred to in this paragraph as ‘the later period’),

then, the trading income from the relevant trade for the accounting period shall, for the purposes of paragraphs (a) and (b), be deemed to consist of two separate income streams, the first income stream consisting of so much of the trading income from the relevant trade for the accounting period as relates to capital expenditure incurred in the earlier period (referred to in this paragraph and the following paragraph as the ‘first income stream’), and the second income stream consisting of so much of the trading income from the relevant trade for the accounting period as relates to capital expenditure incurred in the later period (referred to in this paragraph and the following paragraph as the ‘second income stream’). The amount of income to be attributed to each separate income stream shall be determined in accordance with paragraph (bb)(i), and paragraph (a) shall apply with any necessary modifications such that—

(I) the aggregate of the amounts referred to in subparagraphs (i) and (ii) of paragraph (a) which relate to capital expenditure incurred in the earlier period shall not exceed the amount of the first income stream, and

(II) the aggregate of the amounts referred to in subparagraphs (i) and (ii) of paragraph (a) which relate to capital expenditure incurred in the later period shall not exceed 80 per cent of the amount of the second income stream.

(bb)(i) For the purposes of paragraph (ba) the trading income from the relevant trade for the accounting period shall, as necessary, be apportioned between the first income

*stream and the second income stream on a just and reasonable basis, and any amount to be attributed to the first income stream shall not exceed an arm's length amount.*

*(ii) The company shall maintain and have available such records as may reasonably be required for the purposes of determining whether any such apportionment referred to in subparagraph (i) is made on a just and reasonable basis and whether any amount attributed to the first income stream exceeds an arm's length amount.*

*(c) In computing, for the purposes of this subsection, the trading income from a relevant trade for an accounting period of a company, no account shall be taken of any income which is disregarded for the purposes of the Tax Acts.*

*(7) This section shall not apply to capital expenditure incurred by a company—*

*(a) for which any relief or deduction under the Tax Acts may be given or allowed other than by virtue of this section,*

*(b) to the extent that the expenditure incurred on the provision of a specified intangible asset exceeds the amount which would have been paid or payable for the asset in a transaction between independent persons acting at arm's length, or*

*(c) that is not made wholly and exclusively for bona fide commercial reasons and that was incurred as part of a scheme or arrangement of which the main purpose or one of the main purposes is the avoidance of, or reduction in, liability to tax.*

*(8)(a) An authorised officer may, in relation to an allowance made or to be made to a company under section 284 as applied by this section in respect of capital expenditure incurred on a specified intangible asset—*

*(i) consult with any person (in this subsection referred to as an "expert") who in their opinion may be of assistance in ascertaining the extent to which such expenditure is incurred on the specified intangible asset and, where such an asset is acquired from a connected person (within the meaning of section 10), the amount which would have been payable for the asset in a transaction between independent persons acting at arm's length, and*

*(ii) notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by, or under, the Tax Acts or any other statute or otherwise, but subject to paragraph (b), disclose to the expert any detail in relation to the allowance claimed under this section which they consider necessary for such consultation.*

*(b) Before disclosing information to any expert under paragraph (a), an authorised officer shall give the company a notice in writing of—*

*(i) the officer's intention to disclose information to an expert,*

*(ii) the information that the officer intends to disclose, and*

*(iii) the identity of the expert whom the officer intends to consult,*

*and shall allow the company a period of 30 days after the date of the notice to show to his or her satisfaction that disclosure of such information to that expert could prejudice the company's trade.*

*(c) Where, on the expiry of the period referred to in paragraph (b), it is not shown to the satisfaction of the authorised officer that disclosure could prejudice the company's trade, the officer may disclose the information on the expiry of a further period of 30 days after giving notice in writing of his or her decision to disclose the information.*

*(d) A company aggrieved by an authorised officer's decision made under paragraph (c) in respect of it may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that decision.*

*(9)(a) This section shall not apply to the acquisition by a company (in this subsection referred to as "the transferee") of a specified intangible asset where the acquisition is from another company (in this subsection referred to as "the transferor") and, by virtue of section 615(2) or 617(1), the transferee is treated as having acquired the asset for a consideration of such amount as would secure that neither a gain nor a loss would accrue on the transferor's disposal of the asset to the transferee.*

*(b) Notwithstanding paragraph (a), where the transferor and transferee make a joint election under section 615(4) or 617(4), the transferee shall be entitled to claim an*

*allowance under section 284 as applied by this section in respect of capital expenditure incurred by it on acquiring the specified intangible asset from the transferor.*

*(10)Any claim made by reference to this section shall be made within 12 months from the end of the accounting period in which the capital expenditure, giving rise to the claim, is incurred.”*

## **Submissions**

### *Appellant’s Submissions*

19. The Appellant submitted that a claim pursuant to section 291A of the TCA1997 was made in the CT1 return for 2014 filed on 23 September 2015.
20. It was submitted that the CT1 for 2014 returned by the Appellant on 23 September 2015 reflects the claim made by the Appellant by:
  - i. The inclusion of € [REDACTED] under “*other capital allowances*” at page 3 of the CT1;
  - ii. The inclusion of € [REDACTED] under the heading “*Expenses and Deductions*” opposite the line item “*Depreciation, Goodwill, Capital write-off*” at page 4 of the CT1; and
  - iii. The inclusion of the deduction of € [REDACTED] in the “*Profit on ordinary activities before taxation*” at p5 of the CT1
21. The Appellant submits that the claim pursuant to section 291A of the TCA1997 is repeated in the CT1 forms filed by the Appellant for 2015 and 2016 and that the claim was also notified to the Respondent in writing by way of the letter sent by the Appellant on 19 January 2017.
22. The Appellant submits that the nature of the self-assessment system of tax returns operated by the Respondent is that the Appellant is obliged to make a return of its profits to the Respondent and declare its liability to corporation tax. The Appellant accepts that the Respondent will not look to verify every tax return which they receive but reserves the right, within certain statutory time limits, to do so at a later stage. This, the Appellant submits, is what occurred; the Appellant made a claim in accordance with the self-assessment system and that claim was later opened and examined by the Respondent.
23. It does not follow, the Appellant submits, that the Respondent must know the precise nature of the claim which is being made on the face of the CT1 return alone because the powers conferred on the Respondent as part of the self-assessment system permit the

Respondent to re-open and re-examine any claim made by a taxpayer. The Appellant submits that where the Respondent does have the power to re-open and re-examine any claim made, then a claim is only required to be made as mandated, in this instance, by section 291A of the TCA1997, that is to say by the "prescribed form". The Appellant submits that the Respondent was able to assess the totality of the CT1 return and rejects any assertion that, in the absence of the Appellant completing the line item on the CT1 return which expressly referred to section 291A of the TCA1997, the Respondent would have no chance of being able to assess and decide a claim for relief. The Appellant submits that where a taxpayer completes the "*Other Capital Allowances*" line item in the CT1 return, the Respondent will always have to make further enquires in order to ascertain the nature of the claim being made.

24. The Appellant rejects any contention made by the Respondent that the claim was not notified to them because the claim was not made in the CT1 return for 2014 on the line item which referred to section 291A of the TCA1997 but was instead made on the "*Other Capital Allowances*" line item. In support of this the Appellant submits that Section 864(1) of the TCA which is entitled "*Making of Claims*" provides:

*"Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts*

-

*(a) all claims for exemption or for any allowance, credit or deduction under those Acts,*

*(b) all claims for repayment of income tax, corporation tax or capital gains tax under those Acts, and*

*(c) (i) all claims to relief under those Acts where the relief is measured in the*

*provision under which it is given, and*

*(ii) all matters and questions relating to any relief so measured,*

*in relation to which a right of appeal from a decision is, otherwise than by subsection [949], not specifically provided,*

*shall be stated in such manner and form as the Revenue Commissioners may prescribe, and shall be made to and determined by the Revenue Commissioners or such officer of the Revenue Commissioners (including an inspector) as they may authorise in that behalf."*

25. The Appellant submits that as section 291A(10) of the TCA1997 is silent as to how a claim for capital allowances is to be made to the Respondent, the Appellant had an obligation



under section 959K of the TCA1997 to file a corporation tax return in the prescribed form. Section 959K of the TCA1997 entitled “Requirements for returns for corporation tax purposes” provides:

*“In the case of a chargeable person who is chargeable to corporation tax for an accounting period, the return required by this Chapter shall include –*

*(a) all such matters, information, accounts, statements, reports and further particulars in relation to the accounting period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person under section 884, and*

*(b) such information, accounts, statements, reports and further particulars as may be required by the prescribed form.”*

26. The particulars “required to be contained in a return delivered pursuant to a notice given to the chargeable person under section 884” are set out in section 884(2) of the TCA1997, entitled “Return of profits”, as follows:

*“(a) the profits of the company computed in accordance with the Corporation Tax Acts -*

*(i) specifying the income taken into account in computing those profits, with the amount from each source,*

*(ii) giving particulars of all disposals giving rise to chargeable gains or allowable losses under the Capital Gains Tax Acts and the Corporation Tax Acts and particulars of those chargeable gains or allowable losses, and*

*(iii) giving particulars of all charges on income to be deducted against those profits for the purpose of the assessment to corporation tax, other than those included in paragraph (d),*

*(aa) such information, accounts, statements, reports and further particulars -*

*(i) relevant to the tax liability of the company, or*

*(ii) otherwise relevant to the application of the Corporation Tax Acts*

*to the company, as may be required by the notice or specified in the prescribed form in respect of the return,  
..."*

27. Section 959A of the TCA1997 defines the term "*prescribed form*" as "*a form prescribed by the Revenue Commissioners or a form used under the authority of the Revenue Commissioners*".
28. The Appellant submits that it is clear that the prescribed form in this instance is the form CT1. It is the Appellant's submission that so long as the claim is made by the Appellant in the form CT1 and not made otherwise, for example by way of a letter, then the claim is made in accordance with section 959K of the TCA1997.
29. The Appellant further submits that the return made is, pursuant to section 959 of the TCA1997, required, pursuant to section 884 of the TCA1997, to particularise the Appellant's income and to furnish such information as is relevant to the tax liability of the company that is to say that capital allowances have been deducted from its income.
30. The Appellant submits that the CT1 return for 2014 furnished this information by including:
- i. € [REDACTED] under "*other capital allowances*" at page 3 of the CT1;
  - ii. € [REDACTED] under the heading "*Expenses and Deductions*" opposite the line item "*Depreciation, Goodwill, Capital write-off*" at page 4 of the CT1; and
  - iii. by the deduction of € [REDACTED] in the "*Profit on ordinary activities before taxation*" at page 5 of the CT1.
31. The Appellant rejects any submission by the Respondent that a claim can only be made for capital allowances under section 291A of the TCA1997 by reference to one particular line item on the CT1 return. The Appellant submits that if that is the case then the CT1 form is not written in a manner which would enable a taxpayer to "*clearly understand and meet your tax and customs obligations and to claim your entitlements and tax credits*" and is therefore contrary to the Respondent's own Customer Services Charter.
32. The Appellant submits that the CT1 form is confusing and strengthens this argument by way of an example that a claim for capital allowances in respect of patents can be made under section 291A of the TCA1997 in the same manner as a claim for capital allowances on goodwill under section 291A(1)(a) of the TCA1997. However, the Appellant submits, the "*Other Capital Allowances*" line item on the CT1 is also stated to include "*patent rights*", at line item 2.6(a) of the blank CT1 provided by the Respondent in the course of

the appeal. The Appellant submits that it is not clear how a taxpayer is to know where to put its claim for capital allowances for patents.

33. The Appellant further submits that the CT1 line item "*Other Capital Allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*" is broad enough to include a claim under section 291A of the TCA1997 because it refers to "*Other Capital Allowances*". The Appellant submits that this CT1 line item refers to two different categories, that is, (i) other capital allowances and (ii) relief for know-how under s768 of the TCA. Therefore, the Appellant submits, the line item "*Other Capital Allowances*" is not confined to claims made under section 768 of the TCA1997. It is the Appellant's submission that the line item "*Other Capital Allowances*" is broad enough to include a claim under section 291A of the TCA1997.

34. The Appellant rejects any assertion which the Respondent makes that the CT1 line item "*Other Capital Allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*" relates only to a claim under section 768 of the TCA1997 and also rejects any assertion which the Respondent makes that the Appellant made a specific claim under section 768 of the TCA1997 in the CTI return for 2014 which it submitted to the Respondent.

35. Although not referred to in the Appellant's written submissions in respect of the subject of whether a claim has been made by the Appellant pursuant to section 291A of the TCA1997, in its oral submissions at the hearing the Appellant submitted that section 307 of the TCA1997 is relevant. Section 307 of the TCA1997, entitled "*Corporation tax: allowances and charges in taxing a trade*" provides as follows:

*(1) In computing for the purposes of corporation tax a company's profits for any accounting period, there shall be made in accordance with this section and section 307 all such deductions and additions as are required to give effect to the provisions of the Tax Acts which relate to allowances (including investment allowances) and charges in respect of capital expenditure, and subsection (2) and section 308 shall apply as respects allowances and charges which are to be made under those provisions as they apply for the purposes of corporation tax.*

*(2) (a) Allowances and charges to be made for any accounting period in taxing a trade shall be given effect by treating the amount of any allowance as a trading expense of the trade in that period and by treating the amount on which any such charge is to be made as a trading receipt of the trade in that period.*

(b) (i) A company to which an industrial building allowance under section, an initial allowance under section 283 or an initial allowance under section 303(1)(a) is to be made in taxing a trade for any accounting period may disclaim the allowance by notice in writing given to the inspector not later than 2 years after the end of that period.

(ii) Any such notice shall be accompanied by a certificate signed by the person by whom the notice is given giving such particulars as show that the allowance would be made if no such notice were given and the amount which would be so made.

(iii) Where notice is given under subparagraph (i) for any accounting period, the inspector may make an assessment to corporation tax on the company for that accounting period on the amount or the further amount which in the inspector's opinion ought to be charged."

36. In particular the Appellant submitted that section 307(2) of the TCA1997 is of relevance because the capital allowance the subject matter of the within appeal is an expense in arriving at a taxable profit and the information in relation to the claim as provided in the CT1 return is sufficient to compute taxable profits. The Appellant submitted that by inserting the taxable profit in the CT1 return, which includes the deduction of the capital allowance in respect of a specified intangible asset, then this is sufficient to make the claim for relief pursuant to section 291A of the TCA1997.

37. The Commissioner heard evidence from two witnesses on behalf of the Appellant as follows:

Witness 1 – [REDACTED]

38. The Commissioner heard evidence from [REDACTED], Director of the Appellant who is a [REDACTED]. [REDACTED] gave direct evidence to the Commissioner as follows:

39. [REDACTED] stated that in his view the claim made by the Appellant in the CT1 return for 2014 contained a claim pursuant to section 291A of the TCA1997. He stated that in his view the return sets out the depreciation on the goodwill and the plant and equipment which were in the Appellant's accounts for 2014.

40. He stated that the Appellant had utilised a third party software package supplied by [REDACTED] in order to submit the CT1 return to the Respondent.

41. ██████ stated that he was not the person who completed the CT1 return for 2014 which was submitted to the Respondent and that ██████, a Director of the Appellant, was the person who completed the CT1 return for 2014 and submitted same to the Respondent.
42. He stated that the Appellant did not seek any outside assistance or advice when making the said return and that, prior to the completion of the form, the directors of the Appellant had looked at the legislation and felt that there was nothing that would prevent a claim being made under the line item in the CT1 form entitled "*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*". He stated that the Directors felt that this line item applied to the Appellant and that it was a reasonable thing to do to make the claim under this line item.
43. ██████ stated that there was a difference between the Respondent's format of the CT1 form and the format of the CT1 form provided by ██████ and used by the Appellant. He stated that the sections which appear on the Respondent's form in relation to claims made pursuant to section 291A of the TCA1997 did not appear on the face of the ██████ CT1 form format. He stated that the sections relating to section 291A of the TCA1997 were included on the ██████ CT1 form format by way of hyperlink and that it was not obvious that it was a hyperlink. He stated that it was not possible to see anywhere to put the claim under section 291A of the TCA1997 on the page and this was why it was put under the "*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*".

Witness 2 – ██████

44. The Commissioner also heard evidence from ██████ who is a Director of the Appellant and ██████. ██████ was the person who completed and submitted the Appellant's CT1 return for 2014 to the Respondent on 23 September 2015. He was also the person who submitted the Appellant's CT1 returns for the years 2015 and 2016. ██████ stated that 23 September 2015 was the final filing date for CT returns for the tax year 2014 for companies that had year-end dates in December 2014 and ██████.
45. He stated that he completed the CT1 return using a software package called ██████ which allows ██████. He stated that as far as he was aware ██████

leased the software from a software provider known as [REDACTED]. [REDACTED] did not know whether the [REDACTED] package was approved by the Respondent for the submission of returns.

46. [REDACTED] stated that the [REDACTED] CT1 form format did not identically recreate the Respondent's CT1 form format in that, when compared side by side, the [REDACTED] software package appeared to have relegated lesser used headings through the use of a hyperlink. This meant that the details of these lesser used headings were not visible on the main input screen. He stated that he had used the main input screen to complete the CT1 return for the Appellant for 2014.
47. [REDACTED] referred to screenshots of the Appellant's CT1 return for 2014 which he had created. He stated that under the main heading of "*Capital Allowances*" at the line item "*(a) Machinery and Plant (including motor vehicles and specified intangible assets)*" he had entered a figure which represented capital allowances being claimed on computer equipment and other sundry additions during the 2014 accounting year. He then stated that further down the CT1 form at the line item "*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*" he had entered a claim for a deduction of a figure of €[REDACTED] which was a claim for 20% of the goodwill deduction the subject matter of the within appeal.
48. He stated that by inserting the claim into the line item "*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*" a claim was being made for a deduction against the Appellant's trading profits for 20% of the goodwill claim and that in doing so this was matching the tax deductions in the accounts in line with the Appellant's accounting write-off of the same asset in the accompanying accounts.
49. The Appellant stated that at the time of completing the CT1 return he was not aware of the specific section of the TCA1997 that relief was available under and that he would have instead looked for headings of "*intangible assets*" rather than section 291A of the TCA1997 which he is now aware of. He stated that at the time he was more focused on the narrative rather than the section numbers.
50. [REDACTED] stated that he did not look into the meaning of "*specified intangible assets*" under the line item "*(a) Machinery and Plant (including motor vehicles and specified intangible assets)*" and that he did not look into the available hyperlink on the [REDACTED] format of the CT1 form. He stated that he focused on the "*other capital allowances*" line item.

[REDACTED]  
[REDACTED]



provides that relief arising from the purchase of specified intangible assets is applied as if the specified intangible assets were machinery and plant.

57. The phrase "*specified intangible assets*" also appears a second time on the face of the CT1 return for 2014 adduced in evidence at the line item "*(d) Capital Allowances Schedule*" and states: "*If any amount at (a) above refers to capital allowances for specified intangible assets (Sec 291A TCA 1997) complete the following entries*"
58. The Respondent submits that the Appellant inserted the relevant figure of € [REDACTED] opposite the line item entitled "*Other capital allowances including patent rights) and relief for know-how under section 768 TCA 1997.*" The Respondent submits that the introductory words of the section "*other capital allowances*" are plainly intended and that they operate to distinguish the claim made by ticking that box from the claims provided for in the section above it on the CT1 form which is entitled "*Machinery and plant (including motor vehicles and specified intangible assets)*".
59. The Respondent submits that by ticking the box "*other capital allowances*" not only was the Appellant not making a claim in respect of "*Machinery and plant (including motor vehicles and specified intangible assets)*", rather it was specifically indicating a claim "*other*" than one arising from "*Machinery and plant (including motor vehicles and specified intangible assets)*". The Respondent submits that the word "*other*" in the section of the CT1 entitled "*other capital allowances*" excludes a claim in respect of "*Machinery and plant (including motor vehicles and specified intangible assets)*". The Respondent further submits that a reasonable person reading the return could only understand that the Appellant was making a claim for capital allowances other than machinery or plant, or specified intangible assets.
60. The Respondent rejects the Appellant's submission that "*other capital allowances*" is a phrase which is broad enough to encompass a claim for capital allowances under the heading "*Machinery and plant (including motor vehicles and specified intangible assets)*". The purpose of the phrase "*other capital allowances*", the Respondent submits, is to encompass claims which are specifically not claims in respect of "*Machinery and plant (including motor vehicles and specified intangible assets)*" and cannot, by definition, include them at all.
61. Thus, the Respondent submits, the claim made in the CT1 form for the year 2014 and submitted by the Appellant on 23 September 2015 is not the claim advanced by the Appellant in the within appeal. The Respondent submits that no claim was made by the Appellant for relief under section 291A of the TCA1997 in the CT1 form for 2014 submitted on 23 September 2015 and the Respondent submits that this is determinative of the issue.



The Respondent submits that there is no room for equity or intendment in the application of time limit provisions such as those in issue here. The Respondent submits that the Appellant's 2014 CT1 return filed on 23 September 2015 is unambiguous. Not only does a claim for relief under section 291A of the TCA1997 not appear on the return, but a claim for other relief appears.

62. The Respondent rejects any claim by the Appellant that the Commissioner can "read in" a claim for relief, for assessment time limit purposes or overlook the non-inclusion of detail in a return. This is on the basis that there is no doubt, or ambiguity, or lack of detail in the form CT1 so far as relief pursuant to section 291A of the TCA1997 is concerned. The Respondent submits that the within appeal is outside the scope of the reasoning applied by the Court of Appeal in *Stanley v Revenue Commissioners* [2019] 2 IR 218.
63. The Respondent rejects any claim by the Appellant which might suggest that, notwithstanding that the Appellant did not tick the box to specify relief claimed in respect of "specified intangible assets", this can be discerned from other parts of the Form CT1.
64. First, the Appellant submits that the sum of € [REDACTED] was included against the description "Depreciation/Goodwill/Capital write off". The Respondent submits that this does not amount to a claim made under section 291A of the TCA1997. The existence of options in the description "Depreciation/Goodwill/Capital write off" means, the Respondent submits, that a number of different reliefs would result in a figure being entered in that box. The Respondent submits that the figure of € [REDACTED] which the Appellant entered in that box is more than the relief which the Appellant seeks to claim under section 291A of the TCA1997 because it also includes relief claimed for machinery and plant.
65. The Respondent submits that the "Profit/Loss per Accounts" figure entered in the CT1 form for 2014 was a net figure, arrived at by taking into account the offset of capital allowances claimed, to arrive at the figure entered of € [REDACTED] and is not a claim for relief. The Respondent submits that the figure of € [REDACTED] is no more and no less than what it is described as, that is to say a figure arrived at after deductions which may or may not include a claim / claims for relief. The Respondent submits that the "Profit/Loss per Accounts" amount contained in the Appellant's CT1 form for 2014 is a figure arrived at which takes into account a number of items already deducted or claimed but that it does not amount to a claim for any one of those items or all of them. It is the result of a calculation, and reflected as such in the return.
66. The Respondent rejects any submission by the Appellant that a claim for relief under section 291A of the TCA1997 was an annual claim on the basis of the provisions of section

284 of the TCA1997. This is on the basis that section 291A(1) of the TCA1997 states that:

*“Any claim made by reference to this section shall be made within 12 months from the end of the accounting period in which the capital expenditure, giving rise to the claim, is incurred.”*

67. The Respondent submits that section 291A of the TCA1997 does not contain any additional words which suggest that a claim for relief may be made annually and that the Commissioner is not permitted to read in words where the meaning of section 291A(10) of the TCA1997 is clear using the words as they appear.
68. The Respondent further submits that the time limit contained in section 291A(10) of the TCA1997 is expressly tethered to the year in which the capital expenditure giving rise to the claim is incurred which is a single event which occurred in a single year. There is nothing contained within section 291A which provides that the relief may be claimed annually. Rather, the Respondent submits, as provided by section 284 of the TCA1997 and because the relief for specified intangible assets operates as if those assets were machinery and plant, the relief, once claimed, operates in a manner which spreads the benefit over 5 years.
69. The Respondent rejects any submission by the Appellant that the letter of 19 January 2017 amounts to a claim for relief pursuant to section 291A of the TCA1997. The Respondent submits that this letter was out of time for the making of a claim in that the expenditure was incurred by the Appellant in 2014 and section 291A(1) of the TCA1997 provides that the claim must have been made on or before 31 December 2015.
70. Further, the Respondent submits, the Appellant’s letter of 19 January 2017 could not amount to a claim for relief as relief must be claimed on prescribed form CT1 and the form CT1 for 2014 prescribed specific boxes for the claiming of relief for specified intangible assets. The Respondent submits that if it were the case that the letter of 19 January 2017 was intended to be a claim for relief, then it would have been accompanied by an amended CT1 for the year 2014 where relief would have been claimed. The Respondent submits that the Appellant contends that it claimed relief for specified intangible assets in its return for the tax year 2014 and therefore the letter of 19 January 2017 was not intended as a new or fresh claim for relief.
71. The Respondent rejects any assertion by the Appellant that the legislation is silent as to precisely how a claim for relief under section 291A of the TCA1997. The Respondent

submits that section 959I of the TCA1997 which is entitled “*Obligation to make a return*”, provides at subsection (1) as follows:

*“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.”* (Emphasis added)

72. The Respondent further submits that section 884(2)(aa)(ii) of the TCA1997 refers to the obligation to return “...*such information, accounts, statements, reports and further particulars...as may be required by the notice or specified in the prescribed form in respect of the return.*” (emphasis added). The Respondent submits that the requirement to return information and particulars in accordance with the prescribed return underscores that the taxpayer is not at large as to which information to include, or how to include it.

73. The Respondent rejects the Appellant’s submission that pursuant to section 307 of the TCA1997 by inserting the taxable profit to the CT1 return, which includes the deduction of the capital allowance in respect of a specified intangible asset, then this is sufficient to make the claim for relief pursuant to section 291A of the TCA1997. The Respondent submits that section 307(2)(a) of the TCA1997 is not relevant and submits that it reflects the manner in which the calculation of taxable income is to be done, that is to say that allowances are treated as a trading expenses and the amount on which charges are to be made as a trading receipt. The Respondent submits that section 307 of the TCA1997 says nothing about the manner in which relief is to be claimed and that the Appellant’s submission ignores that a claim for relief is a separate and distinct act. However if such a claim is to be made, it is made on the basis of specific legislative provision, applied to specific facts, then claimed in the proper manner. A return of chargeable profits takes into account and reflects a claim for relief (or reliefs/deductions) but is not itself a claim for relief. It is a figure arrived at in consequence of a claim or claims and of a deduction or deductions.

### **Material Facts**

74. The following material facts are not at issue between the Parties:

- i. The Appellant submitted a CT1 return for 2014 on 23 September 2015;
- ii. The Appellant incurred an expenditure of ██████████ in relation to goodwill in the accounting year 1 January 2014 to 31 December 2014;

75. The following material fact is at issue between the Parties:

- i. The Appellant made a claim for relief pursuant to section 291A of the TCA1997 (see Analysis below).

### **Analysis**

76. Section 291A(1) of the TCA1997 is entitled "*Intangible assets*" and, in the context of the within appeal, defines a "*specified intangible asset*" as meaning an intangible asset being "(b)any trade mark, trade name, trade dress, brand, brand name, domain name, service mark or publishing title," or "*goodwill to the extent that it is directly attributable to anything within any of paragraphs (a) to (k);*"

77. Section 291A(2) of the TCA1997 provides that:

*"Where a company carrying on a trade has incurred capital expenditure on the provision of a specified intangible asset for the purposes of the trade, then, for the purposes of this Chapter and Chapter 4 of this Part—*

*(a)the specified intangible asset shall be treated as machinery or plant,*

*(b)such machinery or plant shall be treated as having been provided for the purposes of the trade, and*

*(c)for so long as the company is the owner of the specified intangible asset or, where the asset consists of a right, is entitled to that right, that machinery or plant shall be treated as belonging to that company."*

78. Section 291A(10) of the TCA1997 provides that:

*"Any claim made by reference to this section shall be made within 12 months from the end of the accounting period in which the capital expenditure, giving rise to the claim, is incurred."*

79. The capital expenditure in question in the within appeal is that of the expenditure by the Appellant when purchasing the goodwill of the Partnership which said expenditure, it is agreed by the Parties, occurred in the Appellant's accounting period of 1 January 2014 to 31 December 2014. It is not at issue between the Parties, for the purposes of the within determination, that the purchase of the goodwill from the Partnership with that of a "*specified intangible asset*" to which section 291A of the TCA1997 relates.

80. Therefore, pursuant to section 291A(10) of the TCA1997, in order for a claim for relief to have been made pursuant to section 291A of the TCA1997, the Appellant must have

submitted its claim to the Respondent on or before 31 December 2015 which was 12 months from the end of the Appellant's 2014 accounting period.

81. Section 884(2)(aa) of the TCA1997 provides that:

*"A company may be required by a notice served on it by an inspector or other officer of the Revenue Commissioners to deliver to the officer within the time limited by the notice a return of—*

*...*

*(aa) such information, accounts, statements, reports and further particulars—*

*(i) relevant to the tax liability of the company, or*

*(ii) otherwise relevant to the application of the Corporation Tax Acts to the company,*

*as may be required by the notice or specified in the prescribed form in respect of the return,* (emphasis added)

82. Section 884(2A) of the TCA1997 provides that:

*"The authority under subsection (2) to require the delivery of accounts as part of a return is limited to such accounts, as, together with such documents as may be annexed thereto and such further information, statements, reports or further particulars as may be required by the notice referred to in subsection (2) or specified in the prescribed form in respect of the return, contain sufficient information to enable the chargeable profits of the company to be determined."* (emphasis added)

83. Section 959I entitled "*Chargeable Persons: Returns*" provides at subsection (1) thereof:

*"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."* (emphasis added)

84. Section 959L of the TCA1997 entitled "*Requirement for returns or corporation tax purposes*" provides as follows:

*"In the case of a chargeable person who is chargeable to corporation tax for an accounting period, the return required by this Chapter shall include—*

*(a)all such matters, information, accounts, statements, reports and further particulars in relation to the accounting period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person under section 884, and*

*(b)such information, accounts, statements, reports and further particulars as may be required by the prescribed form.*” (emphasis added)

85. There is no dispute between the Parties that the prescribed form for the making of a claim pursuant to section 291A of the TCA1997 is the CT1 form.

86. In seeking to establish that a claim for relief was made pursuant to section 291A of the TCA1997, the Appellant relies on the CT1 return submitted to the Respondent on 23 September 2015 for the accounting period 1 January 2014 to 31 December 2014. An issue had been raised at the oral hearing as to whether the [REDACTED] CT1 form format and the CT1 form format of the Respondent were identical in nature but this issue was not pursued by the Appellant in any detail. The evidence of [REDACTED] at the oral hearing accepted that both form formats contained the same relevant line items.

87. Both of the witnesses on behalf of the Appellant gave evidence that the CT1 return submitted by the Appellant was completed using a software package [REDACTED]. A screenshot of the “Trading Results” page which the Appellant completed was submitted at the oral hearing In the CT1 form for 2014 which was adduced in evidence at the oral hearing and contained the following inputs:

<b>Trading Results</b>	
<b>Trade Profits 12.5%</b>	
(a) Profits before Capital Allowances (where a loss occurs show 0)	€ [REDACTED]
(b) If any of the profits entered at (a) above are Stallion profits from trade of farming, enter this amount here	€0
(c) If any of the profits entered at (a) above refer to Greyhound stud fees, enter that amount here	€0
Balancing Charges	€0
<b>Capital Allowances</b> <b><u>Capital Allowances Schedule</u></b>	

Where a claim to tax relief on property based incentive schemes is included below tick the box and give details in the Details of Property Based Incentives Panel	<input type="checkbox"/>
(a) Machinery and Plant (including motor-vehicles and specified intangible assets) (paperclip image)	€ [REDACTED]
(b) If any amount entered at (a) above refers to 'energy efficient equipment' under Sec 285A TCA1997 enter that amount here (paperclip image)	€0
(c) If any amount at (a) above refers to computer software in respect of which an election is being made under Sec 291(4)(a) TCA1997 enter that amount here	€0
(d) <u>If any amount at (a) above refers to capital allowances for specified intangible assets (Sec. 291A TCA 1997) complete the following entries:</u>	
Industrial Buildings	€0
(a) Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997	€ [REDACTED]
(b) <u>If any amount at (a) above refers to patent rights or know-how complete the following entries:</u>	
(a) Trading Losses Forward (from earlier accounting periods) (paperclip image)	€0
(b) Amount of losses at (a) above utilised in this accounting period	
(c) Amount of losses forward not used in this accounting period and available for carry forward to succeeding accounting periods	€0
Total Losses appropriate to this trade before Capital Allowances in this accounting period	€0
Charges (Enter S.247 non-trade charges and Group Relief non-trade charges in Deductions, Relief Credits Panel) (paperclip image)	€0
(a) Total Group Relief claimed	€0

(b) If any amount at (a) refers to Excess Capital Allowances enter that amount here	€0
(c) If any amount at (a) refers to Excess Trade Charges enter that amount here	€0

88. The underlined line items in the [REDACTED] CT1 form format above represent hyperlinks which were included in the [REDACTED] form format which the Appellant chose to use for its 2014 CT1 return.

89. In relation to the hyperlink at the line item “(d) If any amount at (a) above refers to capital allowances for specified intangible assets (Sec. 291A TCA 1997) complete the following entries.”, [REDACTED] submitted a second screenshot which he had created which was a screenshot of the information contained in the said hyperlink as follows:

<b>Trading Results</b>	
<b>Trade Profits Chargeable capital allowances for specified intangible assets (Sec 291A TCA 1997)</b>	
(i) If the company is making an election under Sec 291(4)(a) TCA1997, tick the box	<input type="checkbox"/>
(ii) If the company is making an election under Sec 291A(4) TCA1997, tick the box	<input type="checkbox"/>
(iii) Amount of capital allowances claimed under Sec 291A(3) TCA1997 for this accounting period (Accounts-based allowance)	
(iv) Amount of capital allowances claimed for this accounting period for which an election has been made under Sec 291A(4) TCA1997 for this accounting period (fixed rate allowance)	
(v) Amount of interest claimed as a trade deduction for this accounting period in respect of the provision of specified intangible assets	
(vi) Amount of capital allowances claimed as a charge on income under Sec. 247(4B) TCA1997 for this accounting period in respect of the provision of specified intangible assets	



(vii) If a joint election is being made under Sec. 615(4)(a) TCA 1997 in respect of a specified intangible assets, tick the box and indicate:	
(I) Whether the company is transferring or acquiring the assets	
(II) The tax reference number of the other company	
(III) The name of the other company	
(vii) If a joint election is being made under Sec. 617(4)(a) TCA 1997 in respect of a specified intangible assets, tick the box and indicate:	
(I) Whether the company is transferring or acquiring the assets	
(II) The tax reference number of the other company	
(III) The name of the other company	

90. ██████████ stated in direct evidence that he had not followed the hyperlink contained in the ██████ version of the CT1 form format when completing the return for 2014 because it was not obvious that it was a hyperlink. He also stated in direct evidence that it was not possible to see anywhere to put the claim pursuant to section 291A of the TCA1997 on the main page and this was why it was put under the “*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*”.

91. In light of his direct evidence, that when completing the CT1 return he was not aware of the specific section of the TCA1997 that relief was available under and that he would have instead looked for headings of “*intangible assets*” rather than section 291A of the TCA1997, ██████████ was asked on cross examination why he had not chosen to enter the amount of €██████ at the line item “(a) *Machinery and Plant (including motor-vehicles and specified intangible assets)*”. It was put to him this line item contained the words “*intangible assets*”. In response ██████████ stated that having gone down through the remainder of that section of the form and encountered the heading “*Other capital allowances (including patent rights) and relief for know-how under Sec. 768 TCA 1997*” where he did enter the amount of €██████, he felt that was the home to enter the amount in and he did not explore any further.

92. It was then put to ██████████ that the line item “(d) *If any amount at (a) above refers to capital allowances for specified intangible assets (Sec. 291A TCA 1997) complete the following entries:*” was the second time on the CT1 form that the phrase “*specified*

*intangible assets*” appeared. ██████████ agreed that the phrase “*specified intangible assets*” appeared twice on the face of the ██████████ CT1 form format and confirmed that he had not clicked on the hyperlink which would have brought him to the page as set out at paragraph 90 in the within determination. ██████████ further agreed that the contents of the hyperlink in the ██████████ CT1 form format mirrored the contents of the Respondent’s form and that reference to section 291A of the TCA1997 also appeared on the face of the ██████████ CT1 form format.

93. ██████████ also confirmed on cross examination that he had not adverted to section 291A of the TCA1997 whilst completing the CT1 return. In addition he confirmed that when he had said in his direct evidence that he had been making a claim for goodwill relief he had not said that he was making the claim for goodwill relief pursuant to section 291A of the TCA1997. He confirmed that he had not intended to click on the hyperlink referencing section 291A of the TCA1997 when he was completing the CT1 form and that was not what he was searching for.

94. The Commissioner finds that in considering whether a claim pursuant to section 291A of the TCA1997 was made by the Appellant on or before 31 December 2015 the Commissioner must consider the following:

- i. Was the CT1 the prescribed form for making a claim pursuant to section 291A of the TCA1997 2014 for 2014?
- ii. Was a claim pursuant to section 291A of the TCA1997 for 2014 made using the prescribed form in compliance with sections 884, 959I and 959K of the TCA1997 on or before 31 December 2015?;

Was the CT1 the prescribed form for making a claim pursuant to section 291A of the TCA1997 2014 for 2014?

95. It is not in dispute between the Parties that the CT1 is the prescribed form for the making of a claim pursuant to section 291A of the TCA1997 for 2014 and the Commissioner accepts this as a material fact.

Was a claim for 2014 made using the prescribed form in compliance with sections 882, 959I and 959K of the TCA1997 on or before 31 December 2015?

96. Having accepted that the CT1 was the prescribed form for the making of a claim pursuant to section 291A of the TCA1997 for 2014, the Commission must now consider whether the Appellant made such a claim in the CT1 return which it submitted to the Respondent

on 23 September 2015. In doing so the Commissioner directs herself to the format of the CT1 form.

97. There is no dispute between the Parties as to the contents of the CT1 form. The Appellant chose to use a CT1 form format supplied by a third party supplier, [REDACTED], and chose not to use the form format issued by the Respondent, however the evidence given to the Commissioner is that the questions and line items contained in both form formats are the same albeit in slightly differing manners. The Commissioner notes that [REDACTED] was unable to state whether the form format used by the Appellant and supplied by [REDACTED] was approved by the Respondent for use.
98. In the form format issued by the Respondent there is a section entitled "2 – *Trading Results*". Thereunder there is the subsection entitled "*Capital Allowances*" and further thereunder there is subsection "2.4" which starts with the line item "(a): *Machinery and plant (including motor vehicles and specified intangible assets)*". The Appellant included a figure of € [REDACTED] at this line item which [REDACTED] stated was representative of capital allowances being claimed on computer equipment and other sundry additions during the 2014 accounting year.
99. Section 291A(1) defines "*specified intangible assets*" as meaning an intangible asset being "(b) *any trade mark, trade name, trade dress, brand, brand name, domain name, service mark or publishing title,*" or "*goodwill to the extent that it is directly attributable to anything within any of paragraphs (a) to (k),*". It is agreed between the Parties for the purposes of this preliminary determination that the relevant expenditure of € [REDACTED] relates to goodwill. Therefore the Commissioner finds that the claim the subject matter of the within appeal relates to expenditure on a "*specified intangible asset*" as defined in section 291A of the TCA1997.
100. On the one hand the Appellant submits that the inclusion of the following in the CT1 for 2014 submitted on 23 September 2015 is sufficient to establish that the Appellant made a claim pursuant to section 291A of the TCA1997:
- i. the inclusion of € [REDACTED] under "*other capital allowances*" at page 3 of the CT1;
  - ii. the inclusion of € [REDACTED] under the heading "*Expenses and Deductions*" opposite the line item "*Depreciation, Goodwill, Capital write-off*" at page 4 of the CT1; and
  - iii. the inclusion of the deduction of € [REDACTED] in the "*Profit on ordinary activities before taxation*" at p5 of the CT1

101. The Appellant further submits that the nature of the self-assessment system means that it is not the case that the Respondent must know the precise nature of the claim which is being made on the face of the CT1 return alone because the powers conferred on the Respondent as part of the self-assessment system permit the Respondent to re-open and re-examine any claim made by a taxpayer. The Appellant submits that where the Respondent does have the power to re-open and re-examine any claim made, then a claim is only required to be made as mandated, in this instance, by section 291A of the TCA1997, that is to say by the “prescribed form”. The Appellant submits that the Respondent was able to assess the totality of the CT1 return and rejects any assertion that, in the absence of the Appellant completing the line item on the CT1 return which expressly referred to section 291A of the TCA1997, the Respondent would have no chance of being able to assess and decide a claim for relief. The Appellant submits that where a taxpayer completes the “*Other Capital Allowances*” line item in the CT1 return, the Respondent will always have to make further enquires in order to ascertain the nature of the claim being made.
102. On the other hand the Respondent submits that the CT1 return for 2014 submitted by the Appellant to the Respondent on 23 September 2015 does not contain a claim pursuant to section 291A of the TCA1997.
103. The Respondent submits that the relief the subject matter of the within appeal is relief in respect of a “*specified intangible asset*” as set out in section 291A(1) of the TCA1997.
104. The Respondent submits that the phrase “*specified intangible assets*” appears twice on the face of the CT1 electronic return for 2014 adduced in evidence. In the first instance it appears under the heading “*Capital Allowances Schedule*” at the line item “(a): *Machinery and plant (including motor vehicles and specified intangible assets)*”. The second time the phrase “*specified intangible assets*” appears on the face of the CT1 electronic return for 2014 it is accompanied by explicit reference to section 291A of the TCA1997 at the line item “(d) *Capital Allowances Schedule*” and states: “*If any amount at (a) above refers to capital allowances for specified intangible assets (Sec 291A TCA 1997) complete the following entries*”
105. The Respondent submits that the reason why specified intangible assets are included with machinery and plant in the CT1 is because section 291A(2) of the TCA1997 provides that relief arising from the purchase of specified intangible assets is applied as if the specified intangible assets were machinery and plant.
106. The CT1 form issued by the Respondent for 2014 is as follows:

<b>2 - Trading Results</b>	
<b>Trade Profits at 12.5%</b>	
2.1 (a) Profits before Capital Allowances (where a loss occurs show <b>0.0</b> )	
(b) If any of the profits entered at (a) above are Stallion profits from trade of farming, enter this amount here	
(c) If any of the profits entered at (a) above refer to Greyhound stud fees, enter that amount here	
2.2 Balancing Charges	
<b>Capital Allowances</b>	
2.3 Where a claim to tax relief on <b>property based incentive schemes</b> is included below insert X the box and give details in Panel 17 of this return	
2.4 (a) Machinery and Plant (including motor-vehicles and specified intangible assets)	
(b) If any amount entered at Line 2.4(a) refers to 'energy efficient equipment' (Sec. 285A) enter that amount here	
(c) If any amount at Line 2.4(a) refers to computer software in respect of which an election is being made under Sec. 291(4)(a) enter that amount here	
(d) If any amount at Line 2.4(a) refers to capital allowances for specified intangible assets (Sec. 291A) complete the following entries:	
(i) If the company is making an election under Sec. 291(4)(a)	

insert X in the box	
(ii) If the company is making an election under Sec. 291A(4) insert X in the box	
(iii) Amount of capital allowances claimed under Sec. 291A(3) for this accounting period (Accounts-based allowance)	
(iv) Amount of capital allowances claimed for this accounting period for which an election has been made under Sec. 291A(4) (Fixed rate allowance)	
(v) Amount of interest claimed as a trade deduction for this accounting period in respect of the provision of specified intangible assets	
(vi) Amount of interest claimed as a charge on income under Sec. 247(4B) for this accounting period in respect of the provision of specified intangible assets	
(vii) If a joint election is being made under Sec. 615(4)(a) in respect of a specified intangible asset, insert X in the box and indicate:  (I) whether the company is transferring or acquiring the asset  (II) the tax reference number and the name of the other company	
(viii) If a joint election is being made under Sec. 617(4) in respect of a specified intangible asset, insert X in the box and indicate:  (I) whether the company is transferring or acquiring the asset  (II) the tax reference number and the name of the other company	

2.5	Industrial Buildings
2.6	(a) Other capital allowances (including patent rights) and relief for know-how under Sec. 768
	(b) If any amount at Line 2.6(a) above refers to patent rights or know-how complete the following entries:
	(i) Amount of expenditure on patent rights in this accounting period for which the company is making an election under Sec. 755(4)(a)
	(ii) Amount of capital allowances claimed under Sec. 755(1) for this accounting period in respect of the purchase of patent rights
	(iii) Amount of expenditure on know-how in this accounting period for which the company is making an election under Sec. 768(8)
	(iv) Amount of allowance claimed under Sec. 768(2) for this accounting period in respect of expenditure on know-how
2.7	(a) Trading Losses Forward (from earlier accounting period(s))
	(b) Amount of losses at (a) above utilised in this accounting period
	(c) Amount of losses forward not used in this accounting period and available for carry forward to succeeding accounting periods
2.8	Total Losses appropriate to this trade, before Capital Allowances, in this accounting period
2.9	Charges ( <b>Enter S. 247 non-trade charges and Group Relief non-trade charges in Panel 9 at Lines 9.3 and 9.4 as appropriate</b> )
2.10	Group Relief

(a) Total Group Relief claimed	
(b) If any amount at Line 2.10(a) refers to Excess Capital Allowances enter that amount here	
(c) If any amount at Line 2.10(a) refers to Excess Trade Charges enter that amount here	
2.11 Relief under Sec. 369A(3) (carry back of losses)	
If this return is being filed late and you have included a claim in respect of Losses, Charges or Group Relief or if are making a claim for Losses under Sec. 369A(3) or Sec. 369B(3) and the return for the accounting period in which this loss occurred is being filed late, insert X in the box to indicate of you have taken account of restrictions imposed by Sec. 1085	

107. Having considered the format of the CT1 form issued by the Respondent, which said format was not contested by the Appellant, the Commissioner finds that the contents of same at the section “*Capital Allowances*” are clear and are not confusing as asserted by the Appellant. The [REDACTED] form format which the Appellant chose to use, and which the Appellant was unable to state whether it was approved for use by the Respondent, does not identically replicate either the straight line format of the CT1 issued by the Respondent or the numbering system used in the form issued by the Respondent.
108. In particular the Commissioner notes that in the CT1 form issued by the Respondent the section relating to “*Capital Allowances*” is numbered from 2.3 to 2.11. This numbering is not present in the screenshot adduced in evidence by the Appellant.
109. In addition the Commissioner notes that in the CT1 form issued by the Respondent the line items relating to relief for “*specified intangible assets*” are contained in the section numbered 2.4. This numbering is not present in the screenshot adduced in evidence by the Appellant. The Commissioner finds that the manner in which the Respondent has set out the CT1 form makes clear that any claim for relief pursuant to section 291A of the TCA1997 is to be input under this section 2.4. The Commissioner finds as a material fact that the prescribed form for making a claim pursuant to section 291A of the TCA1997 was the CT1 at section 2.4.



110. The Commissioner does not accept the Appellant's assertion that the section which, in the Respondent's form format is contained at line item "2.6 (a) *Other capital allowances including patent rights) and relief for know-how under section 768 TCA 1997*" was an appropriate line item to complete in order to claim relief pursuant to section 291A of the TCA1997. The Appellant made an assertion that because this section referred to patent rights and because section 291A of the TCA1997 also refers to patents that this therefore renders line item "2.6 (a) *Other capital allowances including patent rights) and relief for know-how under section 768 TCA 1997*" appropriate for a claim pursuant to section 291A of the TCA1997. The form issued by the Respondent makes clear that the patent rights in section 2.6 are patent rights contained in section 755 of the TCA1997 and not those contained in section 291A of the TCA1997. The Commissioner notes that this section was contained in a hyperlink in the [REDACTED] form and that the Appellant did not adduce any evidence in relation to the contents of that hyperlink at the oral hearing. In addition the Commissioner notes [REDACTED] evidence wherein he stated that he did not click in to any of the hyperlinks in the [REDACTED] form when completing the CT1 return for 2013 on 23 September 2015.
111. The Commissioner finds that any confusion on the part of the Appellant which may have arisen at the time of completing the CT1 return for 2014 on 23 September 2015 was not as a result of the CTI form format issued by the Respondent the contents of which relating to claims pursuant to section 291A of the TCA1997 the Commissioner finds are clear.
112. The Commissioner finds that in the CT1 return submitted for 2014 on 23 September the Appellant inserted a claim for capital allowance pursuant either to section 755 of the TCA1997 or section 768 of the TCA1997 at set out at section 2.6 in the Respondent's CT1 form format.
113. No evidence was adduced to the Commissioner which established that an application for relief was submitted by the Appellant to the Respondent in the period between 23 September 2015 and 31 December 2015.
114. Having considered all of the submissions, the evidence and the relevant legislation the Commissioner finds as a material fact that the Appellant did not make an application for relief pursuant to section 291A on or before 31 December 2015 using the prescribed form in compliance with sections 882, 959I and 959K of the TCA1997.

## Determination

115. 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, is 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.”*

116. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner concludes that the Appellant has not succeeded in establishing that a claim for 2014 made using the prescribed form in compliance with sections 882, 959I and 959K of the TCA1997 on or before 31 December 2015.

117. This preliminary issue is determined in accordance with Part 40A TCA 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 TCA 1997.



Clare O'Driscoll  
Appeal Commissioner  
29 August 2022