



Between

108TACD2023

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. These are appeals 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”) in relation to two Notices of Amended Assessment to Capital Gains Tax (“CGT”) issued by the Revenue Commissioners (“the Respondent”) on 27 November 2017 and 10 December 2021 in the sum of €800,400 and €629,158 respectively.
2. The appeals relate to claims for exemption to CGT in accordance with the provisions of section 564 TCA 1997. The dispute between the parties concerns the value of woodland disposed by the Appellant in the years 2012 and 2016. The land disposed of comprised both land and trees and the matter at issue concerns the valuation of the trees growing on the land, as part of a disposal of woodland. Consideration received in respect of the sale of trees is exempt from CGT, in accordance with section 564 TCA 1997.
3. The appeal proceeded by way of a hearing on 8 March 2023. The Appellant was represented by Junior Counsel and the Respondent was represented by Senior Counsel. The Commissioner heard sworn testimony from a number of witnesses including expert witnesses, in addition to legal submissions from the parties’ representatives.

Background

4. The Appellant is the owner of woodland comprising land and trees. As per the evidence set out hereunder, the Appellant has been in the forestry industry for most of his career. He initially acquired a small portion of land and thereafter, continued to purchase lands for forestry which comprised of both lands for planting and woodland. The background to this appeal is that certain acreage of the Appellant were purchased for the purposes of wind farms and the erection of wind turbines. Prior to 2012, the Appellant had not sold timber or woodland.
5. Pursuant to a contract for sale dated [REDACTED], the Appellant and his wife disposed of circa 385 acres of forestry lands for the amount of €6,000,000 ("the 2012 disposal"). The 2012 contract for sale was entered into [REDACTED] [REDACTED] [REDACTED] between the Appellant and [REDACTED] ("the purchaser"). The lands had planning permission to build [REDACTED] wind turbines. Of the 385 acres sold, 368 acres were under forestry.
6. Pursuant to a contract for sale dated [REDACTED], the Appellant and his wife disposed of circa 323 acres of woodland to [REDACTED] [REDACTED] ("the purchaser") for the sum of €4,000,000 ("the 2016 disposal"). The property disposed of comprised of five parcels of land. Of the 323 sold, 293 acres sold were under forestry.
7. In relation to the 2012 Disposal, the Appellant submitted his tax return (Form CG50 dated 29 August 2012 and Form 11 dated 14 November 2013) for the year 2012 on the basis that the amount attributable to the trees growing on the land is circa €4.38 million (€11,900 per acre) and the remaining amount for inclusion in the computation of the gain, as consideration for the disposal, is €1.62 million.
8. By Notice of Amended Assessment dated 27 November 2017, the Respondent assessed the Appellant to CGT in the sum of €941,431, with an outstanding liability of €800,400. The Respondent raised the amended assessment on the basis that the amount attributable to trees is far smaller, being €1,472,000 (€4,000 per acre), and the remaining amount for inclusion in the computation of the gain, as consideration for the disposal, is €4,528,000.
9. In relation to the 2016 disposal, the Appellant submitted his tax return (Form CG 50 dated 5 May 2016 and Form 11 dated 26 October 2017) for the year 2016, on the basis that the amount attributable to the trees growing on the land is circa €3.3 million (€10,223 per acre)

and the remaining amount for inclusion in the computation of the gain, as consideration for the disposal, is €698,000.

10. By Notice of Amended Assessment dated 10 December 2021, the Respondent assessed the Appellant to an additional CGT liability in the sum of €629,158. The Respondent raised the Amended Assessment on the basis that the amount attributable to trees is far smaller, being €1,326,653 (€4,528 per acre).
11. On 14 August 2017, the Respondent issued a notification to the Appellant advising him that his 2012 CGT return had been selected for audit. On 23 February 2018, the Respondent issued further correspondence entitled Notification of Revenue Audit, informing the Appellant that his 2016 CGT tax return had been selected for audit and that this was an extension of the 2012 CGT audit.
12. By letter dated 15 September 2017, Agents for the Appellant wrote to the Respondent and provided *inter alia* a CGT computation in relation to the disposal of the said woodlands.
13. By letter dated 21 November 2017, the Respondent notified the Appellant's Agent that it was not satisfied that the Appellant's CGT Return reflected the correct chargeable gain and CGT payable, on the grounds that the consideration attributed to the disposal of the trees growing on the land was overstated. The Respondent stated that it was of the view that an amount of €4,000 per acre would represent a more accurate value of the trees on the lands, at the date of the sale and it was on that basis that an amended assessment would be raised.
14. The Appellant has obtained four separate valuations from independent expert valuers in relation to the said disposals. The Appellant argues that the expert valuations support the figures submitted by the Appellant. The Appellant states that consideration must be given to the fact that at the time of disposal in 2012, the woodlands had planning permission for wind turbines "*which would yield rent for the landowner, there was an offer of a grid connection, the project was eligible for Public Service Obligation support through the Renewable Energy Feed-In Tariff, energy prices and the distance to the connected substation was circa 500m*".
15. The Appellant states that the correct valuation of the woodland is based *inter alia* on "*the location, size, surroundings, condition, current use, zoning and planning, existing accommodation, services, title/ tenure, the value of wood/ timber and the forestry industry as well as the following. At the time of disposal, the lands were planted primarily with Sitka Spruce and the balance of c. 20% was made up of Alder and Japanese larch; the plantation was performing well with trees growing to c. 9/10 metres in height and having a*

yield class of 22 {index of productivity} The trees had considerable potential income. The property was well managed. There were also grants/ premia receivable”.

16. In relation to the 2012 disposal, the Respondent engaged a professional valuer, subsequent to raising the Notice of Amended Assessment. In relation to the 2016 disposal, the Respondent had the benefit of a valuation report prior to raising the Notice of Amended Assessment.

17. The Appellant maintains that the Notices of Amended Assessment raised by the Respondent are excessive and should not stand. On 21 December 2017 and on 7 January 2021 the Appellant duly appealed the Notices of Amended Assessment to the Commission.

Legislation and Guidelines

18. The legislation relevant to this appeal is as follows:-

19. Section 544(5) TCA 1997, Interpretation and general, provides:-

(5) For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be such method as appears to the inspector or on appeal the Appeal Commissioners to be just and reasonable.

20. Section 547(4) TCA 1997, Disposals and acquisitions treated as made at market value, provides:-

(a) Subject to the Capital Gains Tax Acts, a person's disposal of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where –

(i) the person disposes of the asset otherwise than by means of a bargain made at arm's length (including in particular where the person disposes of it by means of a gift), or

(ii) the person disposes of the asset wholly or partly for a consideration that cannot be valued.

21. Section 548 TCA 1997, Valuation of assets, *inter alia* provides:-

(1) *Subject to this section, in the Capital Gains Tax Acts, “market value”, in relation to any assets, means the price which those assets might reasonably be expected to fetch on a sale in the open market.*

(2) *In estimating the market value of any assets, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at the same time.*

.....

22. Section 564 of the TCA 1997, Woodlands, provides:-

(1) *In the computation under this Chapter of the gain accruing on the disposal by an individual of woodland, there shall be excluded –*

(a) *consideration for the disposal of trees growing on the land, and*

(b) *notwithstanding section 535(2), capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such land.*

(2) *In the computation under this Chapter of the gain, so much of the cost of woodland as is attributable to trees growing on the land shall be disregarded*

(3) *References in this section to trees include references to saleable underwood.*

Submissions

Appellant

23. ██████ gave sworn evidence in support of his appeal and the Commissioner sets out hereunder a summary of his evidence:-

(i) He confirmed that he has been in the forestry industry for most of his career, but that he was not a trained Forester. His evidence was that initially he acquired a small portion of land and has been acquiring land ever since for the purposes of forestry. He mentioned that he purchases the land and plants the trees himself, taking advantage of the availability of grants and premiums. He confirmed an income can be drawn from the forest in terms of the sale of timber and also the sale of woodland (trees and land). He said that it was his view that forestry was an excellent investment. He said that prior to 2012, he had never sold timber or woodland.

- (ii) He confirmed that he engaged four experts to ascertain the value of the woodland in relation to the disposals and the apportionment to be applied to his tax returns. He said that he engaged ██████████ in or around the time of the disposals, ██████████ ██████████ in 2018 and ██████████ for the purposes of this appeal.
- (iii) He gave evidence as to the background to the 2012 disposal of 385 acres for the sum of €6,000,000 and the 2016 disposal of 323 acres for the sum of €4,000,000. He confirmed that initially in 2012, the purchaser were the under bidder in the sale of these lands. He said that the first agreement with the purchaser was entered into in 2003, an option, such that if planning permission was secured for the wind turbines, a lease would be entered into in relation to the land. Reference was made to the lease agreement for the sum of ██████████ per year which is contained at page 145 of the Agreed Booklet of Documents.
- (iv) Reference was made to the 2012 ██████████ and he stated that the sale of the woodland occurred, as the purchaser wanted full control of the woodland, rather than a lease agreement, as trees can interfere with wind turbines and the land had planning permission for ██████████ wind turbines. He said that ██████████ wind turbines in total were to be erected, some of which were on neighbouring land owned by Coillte.
- (v) He mentioned that he knew what his woodland was worth and in addition, the value of the lease on the land. He said at that time, a neighbour had sold trees as opposed to woodland, to the Sawmill and received in or around €16,800 per acre. He explained that his trees were younger, so he requested €14,000 per acre, which he did not quite achieve. Also, he testified that he understood the lease on the land to be worth circa €1,000,000. He mentioned that the upkeep of the trees was important to him in any sale and gave evidence in relation to the Forestry Inspectors that attend to forests to ensure that owners are keeping the trees well maintained, following the provision of grants.
- (vi) In relation to his 2012 CGT liability, he referred to the computation prepared by his accountants. He explained that €4,380,000 is deducted as this is exempt from CGT under section 564 TCA 1997. He explained that the 2016 sale was based on valuations he had requested from ██████████ for a Financial Institution. He said that there is a large profit to be made in forestry and that large investment houses are buying up forestry for profit.
- (vii) On cross examination, reference was made to page 112 of the Booklet of documents and the specific terms of the ██████████. It was put him that

whilst the purchase price of €6,000,000 was for the lands, it also reflected his future co-operation in terms of [REDACTED] that had occurred. The Appellant did not agree with that. In addition, it was put to him that it was not an open market sale, as he had been involved with the purchaser for many years and that he had confirmed that he had never paid €14,000 for forestry up to that point. He said that he was guided by the cost of timber in the markets and what foresters and Coillte deal with in terms of sales, not everyday auctioneers. A Chartered Surveyor's Report entitled "The Irish Forestry Land Market", dated April 2016, was put to him and he testified that it was his view that this appeal has nothing to do with the value of land sales, this has to do with the value of the standing timber on his land. He said that Coillte and the information he gets from his Farmers Journal in the UK all deal with the value of timber, as opposed to land and that is what the purchase price is reflective of, his trees specifically. He said that is why he engaged a valuer to value the trees. In relation to the 2016 disposal, it was put to him that €11,000 per acre has never been achieved. In relation to the purchase price he paid for the lands that were disposed of in 2016, he said that at that time they were a bargain, as he purchased the land from an auctioneer who was valuing the land and not the trees. He said when he sold his lands he got the value of the timber i.e. the trees.

24. [REDACTED] gave expert evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) He testified that he is a practising Forestry Consultant and his qualifications include a Diploma in Science and Forestry, an Honours Degree in Forest Management and a Masters Degree in Environmental Management and Sustainability. He said that he currently manages a large estate which has 720 hectares of forestry. In addition to that he confirmed he teaches [REDACTED] University. He said that he has been working in the forestry industry for the last 20 years and considers himself to be a Silviculturist, a person who is responsible for the care and cultivation of forest trees, a Forester. He referred to his valuation report dated 20 February 2023, at page 379 of the Agreed Booklet of Documents.
- (ii) He gave detailed evidence in relation to the background of forestry in Ireland. He said that it is a thriving business that generates billions in revenue through felling and the sale of timber. He explained the different species of trees and that commercially, Sitka Spruce is the most favourable. However, he said that

plantations must also be of mixed species. He said that there are now a number of regulations in place around the planting of forests and thinning and felling of trees. He explained that the yield class is an index of the potential productivity of even-aged stands (trees). It is based on the maximum mean annual increment achieved by a given tree species growing on a given site and managed according to a standard management prescription. The top height of a stand is the average total height of the 100 largest diameter trees per hectare. He confirmed that top height is assessed by measuring the heights of a number of sample trees throughout the plantation with the number depending on the area and amount of variability in the crop.

- (iii) He explained that there is a financial rotation which is found by calculating the return from the trees once they reach a certain age. He gave evidence in relation to the different types of timber purchased by the Sawmills in Ireland. He stated that once you plant a forest on the land, the land value drops significantly, so as foresters they are interested in the value of the timber that is growing on the land and what practices are engaged to get the trees to a saw log sized product as quickly as possible. He said that there is a minimum diameter that the Sawmill is interested in. He gave evidence that if you have a large forest block the value tends to be higher both from a harvesting and sawmill perspective.
- (iv) He testified that in relation to the 2016 valuation he conducted a site visit, took the relevant measurements and that information was then entered into the financial model. He said that the standard model used is the Irish Dynamic Yield Model and the British Forestry Commission Yield Model. He said that valuing trees is a scientific and fiscal exercise. He mentioned that valuations can also occur through the use of the transaction method, but that there is not enough transactions that take place in Ireland to achieve an accurate result. He mentioned the Chartered Surveyors report dated April 2016 and said that the sample was too small with too many variables at play. He explained that he took the top heights of the trees, then he said he could construct from the yield model what the silvicultural practices should have been. He said that top heights do not change once they reach a certain age. He stated that height, as an indicator of productivity, is site based. He said that you then ascertain the value through the model used and then the values are discounted back to 2016. He confirmed that on this basis he valued the trees at €3,180,652.

- (v) On cross examination, he testified that the underlying value of the land is negligible and that the value is the trees. He said that in terms of market value his valuation bears no relationship to the market value of woodland sold. He stated that he has valued the timber and that he cannot explain why the value of the timber does not match the value that the Respondent has ascribed to the area. He said that he is unable to explain how the Respondent got its market value, because he does not believe that anyone sold a site of that size, that age, that yield class with that proximity to market in Ireland at that time.
- (vi) He gave evidence that it was his view that it is flawed to attribute the value of an area based on a very limited number of transactions. He said that COFORD, the body appointed by the Minister for Agriculture, Food and the Marine to advise the Minister and his Department on issues related to the development of the Forestry sector in Ireland, has produced a guideline for use and it clearly recommends not using transactions for market value. He mentioned that he accepted that the guidance from COFORD does in fact state the favoured process for valuing forests is the transaction method, but it goes onto state that statistically, if you were to use a transaction-based method to establish market value, you are going to find that the very limited extent of that, means that a true valuation is not going to be gained by you. He testified that it was his view that if he was advising a client, the woodland should not be sold for less than €3.18 million, based on the value of the trees on the land.

25. ██████████ gave expert evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) He testified that he was engaged in relation to the 2012 disposal. He confirmed that he is a Chartered Surveyor, member of the SCSI and the MRISC and has been qualified for about 28 years. He said that his practice is quite general and in the region of 40% is commercial valuation work. He gave evidence that his instructions were that there was a sale agreed of woodland in the sum of €6,000,000 and that he was required to calculate an apportionment between the land value and the commercial timber value. He referred to his report dated 24 September 2012 at page 226 of the Agreed Booklet of Documents.
- (ii) He confirmed that he visited the site and took photographs of the area. He stated that he would have approached it differently from ██████████, such that he was not considering the valuation of the trees growing on the land. He said that he would have looked for comparators and contacted other local agents to “*get anecdotal*

views of transactions that might be on the market'. He said that the individual asset is also relevant, for example if there is a lease in place, which was the case herein for the sum of ██████ per annum. He said that he took into consideration the size of the transaction. He confirmed that he took the view that a value of €1.2 – €1.6 million should be attributed to the value of the land.

- (iii) On cross examination he confirmed that he had no experience of valuing trees and that his valuation was based solely on the land without the trees. He confirmed that his report did not contain any detail of the comparators used, as in 2012 he would have kept physical files. He said that he would refer to such physical files if required, but that if he was preparing a report today, he would approach it differently by appending comparators, as opposed to keeping separate files. He mentioned that it would be very hard to find a comparison that would have a lease in place or the potential/offer of a lease in place for ██████ in a location like this for a land-bank like this. He testified that he used his experience, taking a view on the location, the market, speaking to local agents about comparative sales and calculated a figure. He confirmed that his valuation of the timber is essentially what is left over after the valuation of the land. He was cross examined on his evidence.

26. ██████ gave expert evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) He testified that he is qualified as a Forester and has previously worked for ██████ ██████, prior to setting up his own consultancy business in Forestry. He referred to his 2012 report dated 22 August 2012 and his undated 2015 report at pages 245 and 247 of the Agreed Booklet of Documents. The valuation report dated 23 October 2015, prepared for the financial institution was referred to at page 309 of the Agreed Booklet of Documents.
- (ii) He explained in detail the process of valuing trees, namely that you can measure timber at 7 years and that measurements relevant to the yield class, which is a measurement of productivity, are taken by a hypsometer which is like a camera. He stated that it is a very scientific process and also involves looking at the species and age of the plantation. He said that once you have the yield class or measure of productivity it is inputted into the model and to ascertain what that stand, tree, is capable of producing over the rotation of the crop at various stages. He confirmed that he used the Irish Dynamic Yield Model for Forest Management. He explained the various products at various stages of the growth of the tree and the outcomes of the yield class, as outlined in his report.

- (iii) He confirmed that in 2012, he was asked to value the timber standing on the land and he referred to his report. He confirmed also that the 2015 report prepared by him was for a financial institution in relation to the lands disposed of in 2016. He confirmed that thereafter, he completed a report in 2016. He confirmed that in relation to the 2012 disposal, he valued the trees at €4.25 million and in respect of the 2016 disposal, he valued the trees on the lands at €3.30 million.
- (iv) On cross examination, reference was made to the report at page 247 of the Booklet of Documents and it was put to him that his report contains no information as to the age of the crop. He confirmed that in relation to the 2012 disposal, he received the information concerning the age of the crop from the Appellant. He said that it was quite a young plantation. He mentioned that the Forestry Service, which is akin to a forestry regulator, would not allow such a young plantation to be clear felled and a licence would not be permitted for same. He said that as per his report, the valuation is the growth potential of the crop and it is assumed that the full rotation of the crop will be completed before the potential is realised. It was put to him that based on his 2012 valuation of €4.25 million, that figure would work out at in or around €11,486 per acre, which he described as a “very bloated figure”, but said that he had no idea about purchasing woodland as his expertise is the valuation of timber. He said that his valuation did not take into account any sales or prices fetched on the market, it is simply confined to the growth potential of the trees.

27. ██████████ gave expert evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) He testified that he is a qualified accountant having trained with ██████████
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Thereafter, he testified that he set up his own chartered accounting practice called ██████████, which focuses on renewables and a lot of the work involves the day-to-day financial management of renewable energy projects. Reference was made to his report contained at page 373 of the Agreed Booklet of Documents.
- (ii) He confirmed that his instructions were to prepare a desktop based approach to the wind farm lands only for the Appellant, for the 2012 disposal. He said that this meant the roads, hardstands and any other kind of access areas that were required

in order to develop the wind farm were considered. He stated that with wind farm lands, he would generally look at an indication of an underlying lease that might be present and would use a discounted cash flow methodology. He stated that this would involve projecting forward the cash flows that would be resultant from that lease and discount it back at a given discount rate, dependent on the risk and the stage that the project was in.

- (iii) He said that the starting point is to understand whether there is a viable project. He mentioned that what is looked at is what is called in renewables, the "holy trinity", namely planning, planning permission, grid and route-to-market or a power purchase agreement, a way to sell that power from the wind farm. He confirmed that there was planning permission for [REDACTED] 2.5 megawatt turbines. In addition, he said it was confirmed that there was a valid grid connection in place, albeit it was with the developer of the wind farm, but he ascertained that the actual grid connection route was [REDACTED], meaning that it was probably less complex than some other connections that may have to go multiple kilometres and the Renewable Energy Feed-in Tariff was available from the Government. He mentioned that he did the methodology based on two scenarios namely with the lease in place and not. He explained in detail his report and the basis upon which he arrived at €1,307,000 as the valuation of the wind farm lands.
- (iv) He was cross examined on his evidence and certain elements of his report. He confirmed that the valuation dealt with the value of the land to the wind turbine operation or development of the scheme.

28. Submissions were made by Counsel on behalf of the Appellant and the Commissioner sets out hereunder a summary of the submissions made:-

- (i) There were two market sales that took place between a willing seller and a willing buyer at arm's length that received consideration of €6,000,000 in 2012 and €4,000,000 in 2016. The Respondent has a limited ability to impose market value where there is a disposal, and can only impose a different market value if it is not an arm's length transaction. In order for it not to be an arm's length transaction herein, the Appellant would have had to have been connected to the purchasers and that is not the case. The Respondent may not like the valuation or the consideration received by the Appellant, but that does not mean it is not market value consideration. The Respondent's own expert agreed that an open market sale was a willing seller and willing purchaser for consideration and it is immaterial that the 2012 disposal arose out of a [REDACTED]

- (ii) The Appellant comes within the particular exemption to CGT in accordance with section 564 TCA 1997, in relation to those sales. Reference was made to section 544 TCA 1997 and that in apportioning consideration of this kind the Commissioner must do so on a just and reasonable basis.
- (iii) Section 564(2) TCA 1997 implies that there must be some analysis of future value of the trees, as it does not refer to, for example, trees being felled on the date of disposal. The use of the word “growing” envisages a future, as it is quite clear that there is not an ability to put a value on timber of a certain age. If you had woodland that was only five years old, there is not a market at the Sawmill for a tree that is five years old, but yet the legislature have provided an exemption from tax for the sale of woodland, presumably to encourage the growth of woodland. There is no doubt that Section 564(2) TCA 1997 implies some element of looking into the future.
- (iv) The expert evidence of ██████████ is that there is a very specific and scientific methodology to be used in relation to a valuation of trees and that he used the British Forestry Commission Model as opposed to the Respondent’s expert witness who used the transaction based method, which he criticised given that there is a very small pool of samples to be used in terms of comparators. ██████████, who undertook the 2012 valuation and 2015 valuation for the financial institution, also used instruments to measure the trees and relied upon the Irish Dynamic Yield Model derived from COFORD. ██████████ approach, is consistent with ██████████ approach and ██████████ is a forester himself, with plenty of experience of valuing trees. In relation to valuation of ██████████, the Appellant seeks to rely on the valuation by reason of the tax owed. The reason that the witness was not called to give evidence was that the Appellant had plenty of witnesses and the Appellant was conscious of the Commissioner’s time.
- (v) The evidence of the Respondent’s expert witness is wholly unreliable, as the transaction method of valuation is not a reliable method, in such circumstances. Both ██████████ used a scientific formula to calculate the yield class and they did so using instruments upon which they relied, whereas the Respondent’s expert witness just used his naked eye to measure the trees. There is a disparity in the 2016 valuations between ██████████ yield class and the yield class calculations of the Respondent’s expert witness. There was no explanation given for that disparity. There does not seem to be any consideration of the economies of scale point or consideration of the market in any detail. The

Respondent's expert witness accepted that there was an investment market for land of this kind. He has been involved in only one commercial forest transaction in relation to the comparators for his 2012 valuation report and none in 2016. The valuation is based on an informal arrangement of ringing around other auctioneers to see what their sales were at that time.

- (vi) Fundamentally, what is unreliable about his valuations is that he was not instructed that there were in fact market value sales here, namely that there was a €6,000,000 sale in 2012 and a €4,000,000 sale in 2014, and when asked whether he would revise his valuation in light of that, he said "no". That does not stand up. He is relying on transactions in the area, he is being told of a significant transaction that is identical and he is refusing to change his values and that is just not a credible approach. The failure to instruct him as to the sale values when he was preparing his report, has to fundamentally undermine the credibility and the reliability of the valuations, because he did not know that there were significant identical open market transactions for €6,000,000 and €4,000,000.
- (vii) In apportioning the consideration for 2012, it has to be done on a just and reasonable basis, the Appellant and his accountant obtained a number of values and even though they are quite close in terms of the forestry, €4.14 million by ■■■■■, €4.25 million by ■■■■■, they went with the highest, €4.38 million from ■■■■■. In relation to 2016, ■■■■■ valued the trees at €3,180,652 and ■■■■■ at €3.30 million.
- (viii) The Respondent makes no suggestion as to how the sum of €6,000,000 from the 2012 disposal should be apportioned. The valuation report of the Respondent's expert witness in relation to the 2012 disposal is that the value is in the sum of €1.48 million, which leaves a balance that the Respondent makes no effort to explain, save, at best, that balance is possibly attributable to a non-interference clause to stop the Appellant from interfering in the future. That is the best case the Respondent puts forward, in circumstances where this is a market value sale. Further, in relation to the 2012 valuations, there is a consistency between the valuations that were carried out by the Appellant.

Respondent

29. ■■■■■ gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of his evidence:-

- (i) He confirmed that he is a member of IPAV, TUOVA and a registered European valuer. Prior to setting up his valuation company in 2009 he worked for [REDACTED] [REDACTED] [REDACTED]. He referred to his valuation report dated 31 August 2012 contained in a separate bundle of documents. In addition, in relation to the 2016 disposal, he referred to his reports dated 21 February 2022 at pages 386 onwards of the Agreed Booklet of Documents.
- (ii) He stated that he was provided with a number of folios and asked to carry out a valuation, to apportion the value for the trees and underlying land value. He said that the underlying land value will never be very high as once land is afforested, it has to remain under forest cover in perpetuity, as for example, if you fell the trees and devote the land to farming, there may arise a need to repay grants received.
- (iii) He confirmed that on 7 March 2018, he inspected the lands in respect of the 2012 disposal and on 5 December 2021, he inspected the lands in respect of the 2016 disposal. He gave evidence as to his knowledge of the location and the area in terms of afforestation. He mentioned that there have been wind farms constructed in the area. He stated that the lands are hilly and good quality lands for forestry as opposed to agriculture. He confirmed that the lands are planted predominantly with Sitka Spruce trees and that the lands have been developed to a satisfactory standard and maintained. He referred to photographs taken of the lands in the aforementioned reports. He explained what his understanding of the leader growth, was that you pick a number of trees in the plantation and see how much the trees have grown since the last growing period.
- (iv) He gave evidence in relation to his comparators used as per his valuation reports both in relation to sales that he was involved in and sales that he included as a result of having contacted local agents to ascertain what sales have taken place. He mentioned that market demands increased from 2014 onwards, due to a number of international pension funds coming into the market. [REDACTED]
[REDACTED]
[REDACTED] He stated that in relation to purchasers that are representing pension funds, they would do a very detailed due diligence and analysis and have their own professionals on the ground to carry out valuations on their behalf.
- (v) He testified that in relation to the 2012 disposal, he estimated that the lands are valued at €3,300 per acre, if it were an open market sale and based on comparators that he used. He said that he used his knowledge of 33 years in the forestry

business. He confirmed that the total market value in 2012, would be in the region of €1.48 million and that sum would be apportioned giving the crop value, which is the larger part of it, the value of €1.22 million and the underlying land value would be smaller, the value of €259,000.

- (vi) He gave detailed evidence in relation to his individual valuations for the 2016 disposal. In addition, he provided a number of additional sale comparators since 2016. He stated that you would be able to purchase a great plantation, 20 to 22 years old for in or around €7,250 per acre. He said that he has “as much experience as anybody in the forestry sector”.
- (vii) On cross examination, he confirmed that whilst he was an employee of [REDACTED] he was not involved with the attempted purchase of the lands by [REDACTED] the subject matter of the 2012 disposal. He said that in order to complete his valuations he used the comparable evidence of sales he completed himself and would have also contacted a number of auctioneers who may have sold woodland. He confirmed that he used the transaction method based on his knowledge. He testified that he was not qualified to measure trees, but agreed that he did have measurements relating to the tress in his report because the naked eye will tell you the top leader growth of a tree. He stated that by going into the centre of a plantation you will see the growth from year to year. It was put to him that this was not a reliable method of measuring trees yet his report contains yield values. He confirmed he made one commercial forest sale for 40 acres in 2012. When it was put to him that there was an open market sale for €6,000,000 in 2012, he said that the crop was not worth that. He confirmed that he was not instructed as to the 2012 disposal for €6,000,000 and he said that despite now being aware of it he was absolutely not going to change his valuation as “the crop that was there on the day and the underlying land value as of 2012 would remain the same for me, from a forestry perspective”. He said that he was asked to value what was there on the day and that is what he came up with. He confirmed that despite his sale in 2012 being only 40 acres, it was a good comparable to the within sale of 385 acres. He testified that he had no experience of selling woodland the size of the 2012 disposal. He said that he was also not aware of the 2016 disposal at the time of his valuation and that despite now being aware of it he would not amend his valuation based on the sale. It was put to him that the method of calculating yield class, by using an implement to measure the tree, by looking to a database to ascertain what the age of the tree is and then putting it into the British Forestry Commission software, was an accurate method of assessing yield class, but he said that he would stand by

his valuations. Further, when it was put to him that as he calculates yield class with the naked eye, it is an unreliable method of calculating yield class, which is proven by [REDACTED] evidence, which is very different in relation to yield class, he did not agree. He confirmed that he was not involved in any commercial forest sales in 2016. In relation to access to the market, he confirmed that as the plantations were young there was no access to the Sawmill market, but also that there was an investment market.

30. Submissions were made by Senior Counsel on behalf of the Respondent and the Commissioner sets out hereunder a summary of the submissions made:-

- (i) Reference was made to section 564 TCA 1997. Both in 2012 and 2016, the consideration that was paid to the Appellant was not apportioned on any of the contractual documents. So there is no apportionment, he was simply paid a sum of €6,000,000 in 2012 and €4,000,000 in 2016.
- (ii) What is to be excluded is "*consideration for the disposal of trees growing on the land*". It is consideration for the disposal of the trees growing on the land at the date of the disposal, not the trees that may be planted subsequently or the trees that may grow over 20 years into something much more saleable than is the case at the date of disposal. It seems logical that it must be at the date of the disposal that you assess what consideration is given for the disposal of the trees that are growing on the land and if the Oireachtas intended a more elaborate formula or more elaborate way of trying to value this, they would have to enhance that definition into something much more.
- (iii) In order to estimate or establish what the market value of the trees growing on the land is, one needs to set up a market, whether that is an actual market based on evidence of sales and purchases or whether it is some kind of typical market, but you need a variety of comparators in order to generate a spread of values in which then you will try and situate the value of the asset in question, which in this case are the trees growing on the land. What we are trying to do is to establish the price that the trees growing on the land might reasonably be expected to fetch on a sale in the open market at the date of disposal.
- (iv) It is not suggested that the transactions were not arm's length transactions but certainly in relation to 2012, it is not accepted that the sale was a sale on the open market, because it clearly was not. [REDACTED]
[REDACTED]
[REDACTED].

So, the value given, in 2012, cannot really contribute to any kind of a construction of a hypothetical market value.

- (v) Reference was made to section 548 TCA 1997. In order to establish the price that the trees growing on the land might reasonably be expected to fetch on a sale in the open market at the date of disposal, one needs to set up a market, whether that is an actual market based on evidence of sales and purchases in the past or in and around the present time, or whether it is some kind of typical market, but you need a variety of comparators in order to generate a spread of values in which then you will try and situate the value of the asset in question.
- (vi) The onus of proof rests entirely upon the Appellant in this appeal to establish that the assessments raised are excessive. The first valuation report carries no weight as ██████ did not attend at the hearing of the appeal to give evidence and also that the report is a one page report with his view of what apportionment ought to be. All that ██████ can offer is the value of the underlying land as he had no knowledge of forestry. In addition, he infers that once the land is valued everything else must be attributable to the trees, but that is not what is mandated by the statutory provisions. ██████ can only offer a view as to the valuation from the point of view of buying it for a wind farm project and what he would expect to have to pay. ██████ could not give detailed evidence as to the programme he used to produce the valuation figures but accepted that the value of €4.25 million relates to the growth potential of the crop to be found at that point in time. So, €4.25 million is an estimation of what you can hope to recover into your hand if you manage this forest up to the date of maturity, which could be 35 or 40 years from planting. That is a growth potential figure. It is not a figure which indicates the market value of the trees growing on the land, it is not a price that the trees might reasonably be expected to fetch on a sale in the open market at the date of disposal. Not one of them has identified any comparable transaction that could have generated a price per acre attributable to the value that has been put in by the Appellant in his return. ██████ gave evidence of the various sales in the open market.
- (vii) It is accepted the 2016 sale is on the open market. In relation to ██████ valuation, there is no evidence adduced that the financial institution was happy with same. Again, his values are designed to forecast the potential growth of the trees and not the open market sale price. The calculations do not consider any sale or purchase prices anywhere. ██████ performed more or less the same exercise as his calculations amount to growth potential, as opposed to market value at that

point in time. [REDACTED] was not aware of any land that could fetch the values attributed to it as suggested by [REDACTED]. Neither exercise looked to the open market and potential sales. Therefore, the values are not reflective of what can be achieved on the open market and that is what is mandated by statute.

Material Facts

31. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

- (i) Pursuant to a contract for sale dated [REDACTED], the Appellant and his wife disposed of circa 385 acres of forestry lands for the sum of €6,000,000.
- (ii) Pursuant to a contract for sale dated [REDACTED], the Appellant and his wife disposed of circa 323 acres for the sum of €4,000,000.
- (iii) The 2012 disposal involved land which had a grant of planning permission for [REDACTED] wind turbines.
- (iv) The 2012 sale involved lands that had the potential for a lease in the sum of [REDACTED] per annum.
- (v) The lands were planted primarily with Sitka Spruce trees, with the balance of approximately 20% being made up of Alder and Japanese Larch trees. From a commercial viewpoint, Sitka Spruce is the most favourable species.
- (vi) Both the 2012 disposal and the 2016 disposal was an open market sale. The fact that the 2012 disposal was [REDACTED] [REDACTED] [REDACTED], does not mean that it is not an open market sale.
- (vii) The process of valuing trees is a methodical and scientific process involving careful measurements being taken with the use of digital equipment and the use of an approved model to produce results.
- (viii) The process of calculating yield class using an implement to measure the trees and software packages such as GROWFOR, is a far more accurate method than using the naked eye.
- (ix) Both [REDACTED] and [REDACTED] used digital equipment to take measurements, as opposed to [REDACTED] who used the naked eye.

- (x) The transaction method is an unreliable method of valuing commercial plantations in Ireland, in circumstances where there are limited transactions to be used as comparators. COFORD does not recommend using the transaction method in such circumstances.
- (xi) COFORD has produced a standard manual for valuing commercial plantations in Ireland, which allows for actual plantation characteristics to be taken into account.
- (xii) There are millions of cubic metres of timber traded in Ireland every year and there is an investment market for Forestry in Ireland.
- (xiii) The Respondent did not have the benefit of an expert report/valuation when it took the decision to issue the Notice of Amended Assessment in relation to the 2012 disposal, but did so in respect of the 2016 disposal.
- (xiv) The Respondent raised an amended notice of assessment dated 27 November 2017, for the 2012 disposal, in the absence of a valuation report. The valuation report obtained was subsequent to issuing a Notice of Amended Assessment to CGT.
- (xv) In relation to the 2012 disposal, as per the valuation report dated 18 September 2012, ██████████ valued the commercial timber on the lands and associated grants at €11,200 per acre (4.14 million).
- (xvi) In relation to the 2012 disposal, ██████████ conducted a valuation exercise comprising a market valuation apportioning the value between the commercial timber on the land and the land itself, taking into account planning permission for ██████████ wind turbines and the availability of a lease on the lands for the sum of ██████████ per annum. He valued the land in the sum of €1,620,000 and the commercial timber in the sum of €4,380,000. The values attributed to his calculations are the investment value of the land without the forestry. He has no expertise in the valuation of trees.
- (xvii) In relation to the 2012 disposal, ██████████ conducted a valuation relating solely to the value of the wind farm on the land, being €1,307,000. He has no expertise in the valuation of the trees.
- (xviii) In relation to the 2012 and 2016 disposals, ██████████ valued the trees in the sum of €4.25 million and €3.3 million respectively. ██████████ is a trained Forester and used an approved method namely, the Irish Dynamic Yield Model For Forest Management, to ascertain his valuations.

- (xix) In relation to the 2012 disposal, ██████████ received the information as to the age of the trees from the Appellant.
- (xx) In relation to the 2016 disposal, ██████████ valued the trees growing on the land in the sum of €3.18 million. ██████████ is a trained Forester and used an approved method namely, the British Forestry Yield Model, to ascertain his valuation.
- (xxi) ██████████ visited the lands and took measurements with the naked eye, as opposed to using digital equipment. His valuations were ascertained using the transaction method.
- (xxii) ██████████ reports were prepared in the absence of instructions that there were two open market sales in 2012 and 2016 for values well in excess of the comparators used by the witness.
- (xxiii) The valuation ascribed to the trees, as the residue, by ██████████ ██████████ ██████████ is not out of line with the valuations provided by the trained Foresters ██████████ ██████████ ██████████.
- (xxiv) The volume of the size of the holding is relevant to a valuation.
- (xxv) The valuation of the trees is based on *inter alia* location, size, surroundings, condition, current use, zoning and planning, existing accommodation, services, title/tenure, the value of wood/timber, the property being well managed with grants and premia available.

Analysis

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

33. The Appellant’s appeal relates to a number of grounds as set out in his Notices of Appeal dated 21 December 2017 and 7 January 2022. The parties do not agree on the value to be apportioned to the trees growing on the land. The parties have both engaged valuers

who have valued the trees and the land for both the 2012 and 2016 disposals. In accordance with the provisions of section 564 TCA 1997, the Appellant claimed exemption to CGT in relation to the disposal of woodland. It is these disposals of woodland that the Commissioner must consider and in doing so, must contemplate the value attributable to the “*trees growing on the land*” as provided for in accordance with the provisions of section 564 TCA 1997.

34. The Commissioner considers that there is no inherent ambiguity in the statutory wording used per section 564 TCA 1997 and thus, the interpretative approach to be applied is a literal one taking into account the jurisprudence of the Superior Courts in respect of the interpretation of taxation statutes, the most recent being the summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 and the judgment of O’Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552.
35. The Commissioner is also mindful of the recent decision in *Heather Hill Management Company CLG and Gabriel McCormack v An Bord Pleanala, Burkeway Homes Limited and The Attorney General* [2022] IESC 43 (“Heather Hill”) wherein at paragraph 108 of the decision of Murray J. he states that the “*literal and purposive approach to statutory interpretation are not hermetically sealed*”.
36. The exemption pursuant to section 564 TCA 1997 applies to a “*disposal ... of woodland*”. The exemption in relation to the consideration attributable to trees is described as an exemption for the “*disposal of trees growing on the land*”. Thus, the words per section 564 TCA 1997 are to be afforded their ordinary and natural meaning.

The 2012 transaction and the “open market”

37. It is the Appellant’s position that the 2012 disposal was for market value, being a sale made at arm’s length on the open market. The Respondent does not accept this position. The Commissioner notes the background to the said disposal, [REDACTED]. The Commissioner notes that in 2002/2003 the lands (and adjoining lands) were identified as being suitable for the development of a wind farm and the purchaser entered into a joint venture agreement with the Appellant and his wife to develop a wind farm, [REDACTED]. The [REDACTED]. The

Commissioner notes that as commissioning occurred in [REDACTED], the permission is due to expire in [REDACTED]. The Wind Farm consists of [REDACTED] turbines, [REDACTED] of which are located on the subject lands.

38. The Commissioner notes that in May 2009, the Appellant and his wife [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] at page 104 of the agreed bundle of hearing documents. The Commissioner has also considered that in 2012, [REDACTED] [REDACTED] provided *inter alia* for the payment of €6,000,000 to the Appellant for the sale of the Lands “*subject to: (a) a buy-back option after thirty years in favour of the defendants for €1.00 and (b) (should the defendants exercise such buy-back option) an option in favour of [REDACTED] for a twenty-five year lease of the Lands*” (“*the Option Agreement*”). The Commissioner notes the [REDACTED] dated 22 May 2012, contained at page 112 of the agreed bundle of documents. The Option Agreement was executed in June 2012, and became effective on 31 August 2012, being the date of completion of the sale of the Lands by the Appellant and his wife to the purchaser.

39. The Commissioner has considered section 10 TCA 1997 which provides for connected persons and section 549 TCA 1997 which provides for transactions between connected persons, which the Commissioner was directed to by the Appellant. In addition, the Commissioner has considered section 547 and 548 TCA 1997 which provides for disposals and acquisitions treated as made at market value and the Valuation of assets, which both parties directed the Commissioner to. The Respondent argues that the 2012 disposal is not a transaction on the open market, [REDACTED] [REDACTED] the 2012 sale cannot contribute to any kind of hypothetical market value. The Appellant contends that the sale does in fact represent an open market sale for consideration between a willing vendor and purchaser.

40. The Commissioner has considered the decision of *IRC -v- Gray* [1994] STC 360 which the Appellant refers to in its written submissions. In that case, at pages 371 and 372, Hoffman LJ stated:

“The property must be assumed to have been capable of sale in the open market, even if in fact it was inherently unassignable or held subject to restrictions on sale. The question is what a purchaser in the open market would have paid to enjoy whatever rights attached to the property at the relevant date the theme which runs through

the authorities is that one assumes that the hypothetical vendor and purchaser did whatever reasonable people buying and selling such property would be likely to have done in real life. The hypothetical vendor is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business, negotiating seriously without giving the impression of being either over-anxious or unduly reluctant. The hypothetical buyer is slightly less anonymous. He too is assumed to have behaved reasonably, making proper inquiries about the property and not appearing too eager to buy. But he also reflects reality in that he embodies whatever was actually the demand for that property at the relevant time. It cannot be too strongly emphasised that although the sale is hypothetical, there is nothing hypothetical about the open market in which it is supposed to have taken place. The concept of the open market involves assuming that the whole world was free to bid, and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable. The practical nature of this exercise will usually mean that although in principle no one is excluded from consideration, most of the world will usually play no part in the calculation. The inquiry will often focus on what a relatively small number of people would be likely to have paid. It may have to arrive at a figure within a range of prices which the evidence shows that various people would have been likely to pay, reflecting, for example, the fact that one person had a particular reason for paying a higher price than others, but taking into account, if appropriate, the possibility that through accident or whim he might not actually have bought. The valuation is thus a retrospective exercise in probabilities, wholly derived from the real world but rarely committed to the proposition that a sale to a particular purchaser would definitely have happened. It is often said that the hypothetical vendor and purchaser must be assumed to have been 'willing', but I doubt whether this adds anything to the assumption that they must have behaved as one would reasonably expect of prudent parties who had in fact agreed a sale on the relevant date. It certainly does not mean that having calculated the price which the property might reasonably have been expected to fetch in the way I have described, one then asks whether the hypothetical parties would have been pleased or disappointed with the result; for example, by reference to what the property might have been worth at a different time or in different circumstances. Such considerations are irrelevant".

41. The Commissioner is satisfied that based on the applicable statutory provisions and the evidence adduced herein, the 2012 disposal was a disposal at arm's length for market value and that the sale being the subject of a [REDACTED] [REDACTED] does not alter the position that this was an open market

sale. There is no evidence to suggest otherwise, nor would a hypothetical purchaser not have paid the sum achieved, for the rights attached to the lands. There was a willing vendor and willing purchaser.

42. The Commissioner notes that the Respondent accepts that the 2016 disposal is a sale on the open market for value.

Section 564 TCA 1997

43. Section 564 TCA 1997 specifically provides that where an individual makes a disposal of woodland, the consideration for the disposal of the trees growing on the land and saleable underwood are not taken into account for CGT purposes. As the consideration for standing timber (trees) and saleable underwood are excluded from the sale proceeds of woodland, in computing any gain or loss on the disposal of the woodland, that part of the cost of the woodland attributable to the standing timber and saleable underwood, is to be excluded.

44. The exemption pursuant to section 564 TCA 1997 applies to a “*disposal ... of woodland*”. The exemption in relation to the consideration attributable to trees is described as an exemption for the “*disposal of trees growing on the land*” [Emphasis added]. Thus the Commissioner is satisfied that the use of the words “*disposal ... of woodland*” together with the reference to trees “*growing on the land*” means that the crux of the issue in this appeal is the value to be attributed to the trees for the purposes of the Appellant’s CGT computation [Emphasis added]. The Commissioner notes that this exemption applies only to individuals and not Companies. The Appellant is an individual and thus is entitled to seek to benefit from the exemption.

45. The Appellant submits that the correct valuation of the trees at the time of disposal in 2012 and 2016 is far higher than the figure relied upon by the Respondent to amend the assessment. In addition, the Appellant submits that the correct valuation of the land at the time of disposal is much less than is contended for by the Respondent. The Commissioner notes that at the time of the 2012 disposal, the Appellant relied upon valuations from [REDACTED] to value the trees growing on the land which in turn, formed the consideration to be excluded in computing his CGT return in relation to the trees growing on the land. In relation to the 2016 disposal, the Commissioner notes that the Appellant relied upon a valuation prepared by [REDACTED] for a financial institution in 2015. In addition to these reports, the Commissioner had the benefit of a report prepared by [REDACTED] in 2018 and a report prepared by [REDACTED] for the hearing of this appeal. [REDACTED] report relates to the 2012 disposal and [REDACTED] to the 2016 disposal.

46. The Commissioner notes that the Respondent did not have the benefit of an expert report/valuation when it took the decision to issue the Notice of Amended Assessment in relation to the 2012 disposal, but did so in respect of the 2016 disposal.

47. The Commissioner notes that both parties have engaged expert valuers who have valued (i) the trees and (ii) the land for the purposes of both the 2012 and 2016 disposals. The Commissioner heard extensive evidence from expert witnesses, which rationale and reasoning the Commissioner considers hereunder. Before doing so, the Commissioner considers it helpful to set out a table of the valuations received in respect of the said disposals which is set out in the submissions in this appeal.

2012 Disposal

€ - value	Land	Forestry	Windfarm	House	Trees only	Value of Forestry per acre	Total
█ █ █ █ █	1,620,000	4,380,000				11,900 per acre	6,000,000
█ █ █	1,963,000	4,140,000				11,200 per acre	6,103,000
█ █ █		4,250,000					6,000,000
█ █ █			1,307,000				
Revenue	259,000	1,220,000				4,000 per acre	1,479,000

2016 Disposal

€-value	Land	Forestry	Windfarm	House	Trees only	Value of Forestry per acre	Total
████████ ██████	548,000	3,180,652		150,000		10,855 per acre	3,999,982
███ ██████ ██████	548,000	3,302,000		150,000		11,270 per acre	4,000,000
Revenue	198,237	1,326,653		150,000		4,528 per acre	1,674,890

48. In his written outline of argument, the Appellant submits that the test the Commissioner must apply in considering expert evidence is contained in the dicta of Mr Justice Clarke in the Supreme Court in the decision of *Donegal Investment Group plc v Danbywiske and others* [2017] IESC 14 such that “an expert is there to assist the court, not to decide the case and the court has no obligation to accept the evidence of any particular expert, even where it is uncontradicted” - per Clarke J. at para 60 of the decision. Further Clarke J. sets out the role of a trial judge in considering expert evidence as follows

“5.1 A starting point has to be to identify the proper role of a trial judge in assessing expert evidence. Charleton J. explained that role in James Elliott Construction Limited v. Irish Asphalt Limited [2011] IEHC 269, (para. 12 of the judgment) in the following terms:-

Every expert witness has to be evaluated on the basis of sound reasoning. An expert witness is, however, no different to any other witness simply because he or she is entitled to express technical opinions; all of us are subject to human frailty: exaggerated respect based solely on a witness having apparent mastery of arcane knowledge is not an appropriate approach by any court to the assessment of expert testimony. Every judge has to attempt to apply common sense and logic to the views of an expert as well as attempting a shrewd assessment as to reliability.

5.2. *In setting out the reasons why he preferred certain expert testimony over others in that case Charleton J. went on to say that:-*

Of these criteria, the most important reasons whereby I have chosen one expert over another have been the manner in which an opinion has been reasoned through and the extent to which opposing views have been genuinely and objectively considered on the basis of their merit.

A judge must bear in mind that, notwithstanding that an expert may firmly declare a duty to the court, it is a natural aspect of human nature that even a professional person retained on behalf of a plaintiff or defendant may feel themselves to be part of that side's team. Of particular importance in this case, therefore, has been the extent to which an expert has been able to step back and to consider and to think through an opposing point of view. As with demeanour, this is not readily demonstrated on a transcript of evidence. Rather, to a trial judge, it can be possible to see the degree to which a witness is thinking through the potential for an opposing theory before giving a reasoned answer. Experience in other cases demonstrates that there is a danger that experts may erect a barrier of apparent learning in order to disguise what would be an answer awkward to their side were it to be expressed plainly. Apart from the attractions of logic and reasoning, therefore, assessing an answer based on what is seen and heard in the courtroom remains important.

5.5. *However, as Charleton J. also pointed out in Elliott, an important part in the assessment of any evidence is the application by the trial judge of logic and common sense to the testimony heard. That approach is particularly relevant in the context of expert evidence. Where experts differ the position adopted by the other side will be put to each of the experts in cross-examination. Their reasons for maintaining their view can be examined in some detail. The trial judge can, therefore, assess whether the reasons given by one expert or the other stand up better to scrutiny.*

49. The Commissioner considers that experts should be able to explain otherwise “unfathomable concepts from their deep knowledge of their discipline and should be balanced in their conclusions through a consideration of all real possibilities”¹. The Commissioner is mindful of the recent decision in *Duffy v McGee & Another* [2022] IECA

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254 (“Duffy”) wherein Noonan J. helpfully considered in detail the role of the expert witnesses and highlighted at paragraph 94 the duty of impartiality as follows:-

“Thus, where the facts are in dispute, the expert should make clear which version of events forms the basis for his or her opinion and what the consequences for that opinion are if an alternative version is accepted. In that analysis, however, it is no function of the expert to advocate for a particular resolution of factual controversies as that would be to usurp the function of the court. The duty of impartiality and independence necessarily imports a willingness on the part of the expert to remain open to alternative possibilities and if necessary, to change his or her mind when confronted with new information”.

50. Turning now to consider each of the expert witnesses’ testimony, the Commissioner has grouped together her consideration of the expert evidence, as per the years of disposal, in order that a methodical approach can be taken to the evidence available in this appeal.
51. In relation to the 2012 disposal, the first of the valuations the Appellant urged the Commissioner to consider was the report of ██████████ at page 223 of the Agreed Booklet of Documents. The valuation is a one page letter dated 18 September 2012. ██████████ sets out his opinion namely, that the *“value of the commercial timber on the above lands and associated grants would provide for a valuation of €11,200 per acre (4.14 million)”*.
52. ██████████ was not present at the hearing of the appeals to provide sworn evidence in relation to his opinion. Whilst the Commissioner is satisfied that she can consider the document tendered and its contents, nonetheless the Commissioner agrees with the Respondent’s submission that it carries little weight, in circumstances where ██████████ arrives at the aforementioned conclusion, but the Commissioner had no opportunity to hear from ██████████ as to how such a conclusion was reached and which is not detailed in the valuation letter. Therefore, the Commissioner attaches little weight to the opinion and report of ██████████.
53. Further in relation to the 2012 disposal, the Commissioner heard evidence from ██████████, an expert witness tendered on behalf of the Appellant. ██████████ gave evidence in respect of his valuation report dated 24 September 2012, contained at page 226 of the Agreed Booklet of Documents. He confirmed in evidence that he is a qualified valuer of many years and that his practice is general in nature, with approximately 40% of his work being attributable to commercial valuations. His evidence was that he undertook a visual inspection of the woodland and its boundaries. The Commissioner notes that the purpose of the valuation was a *“market valuation and the apportioning of the value*

between the commercial timber on the land and the land itself with the benefit of planning permission for ■ wind turbines". His report confirms that the lands were planted primarily with Sitka Spruce trees, with the balance of approximately 20% being made up of Alder and Japanese Larch trees. His report confirms that the property seems well managed and that the trees are in good order. The Commissioner notes that he concludes that the total valuation of the disposal is in the sum of €6,000,000, apportioned as land value being in the sum of €1,620,000 and the commercial timber value i.e. the trees being in the sum of €4,380,000.

54. The Commissioner considers that the witness fairly stated that he is not a commercial timber expert and approached the valuation from the point of view of the land value, his methodology being that he deducted the land valuation from the purchase price, to ascertain the valuation of the trees on the land. He testified that the values attributed to his calculations are in his view, the investment value of the land without the forestry and of importance to the valuation of the land ascertained, was the lease available on such land for ■ per annum. He confirmed that he looked for comparators in the market and contacted other local agents to *"get anecdotal views of transactions that might be on the market"*. The Commissioner considered the witness to be credible and open minded in his approach. He was crystal clear in his summation of his valuation, such that he was qualified to value the land, not the trees, and that the valuation of the trees is what remains after the valuation of the land is deduced. The Commissioner considers, therefore, that his evidence is of sufficient relevance to establish land valuation.
55. ■ gave expert evidence on behalf of the Appellant. His evidence relates solely to the 2012 disposal, as per his valuation report dated 11 June 2018 at page 373 of the Agreed Booklet of Documents. He confirmed that his area of expertise relates to the valuation of wind farms. The Commissioner notes that his instructions in 2018 were to conduct a desktop exercise in relation to the valuation of the lands with planning permission for ■ wind turbines, namely the 2012 disposal. The Commissioner has considered his testimony such that the starting point of his valuation exercise was that he had to understand if there was a viable project. He said it is *"what we call in renewables the holy trinity, being planning permission, grid and route to market or a power purchase agreement, a way to sell that power from the wind farm"*.
56. The Commissioner notes that his conclusions were that this was a viable project, as there was planning for ■ wind turbines, grid access within ■ meters and the availability of a route to market. The witness gave evidence as to the methodology of valuation, using modelling with two scenarios namely with the lease being in place and the lease not being

in place. The Commissioner notes that the valuation advised by the witness was based on the midpoint of the two scenarios being €1,307,000. He confirmed he had no expertise in the valuation of the trees growing on the land. In light of this evidence the Commissioner considers that his evidence is relevant, so far as it relates to the value of the wind farm on the land and not the trees growing on the land.

57. ██████████, expert witness tendered on behalf of the Appellant was involved in valuations for both the 2012 and 2016 disposals. He testified that he is a qualified and trained Forester. The Commissioner notes that the English dictionary defines a Forester as either a person in charge of a forest or skilled in planting, managing, or caring for trees. The Commissioner is satisfied based on his evidence that he has considerable experience in the forestry industry in Ireland and valuations relating to same. The Commissioner considers that his evidence is reliable and further, that it assisted the Commissioner with her understanding of the approach to the valuation of trees and woodland in Ireland, which in turn, has assisted the Commissioner with forming her conclusions in respect of these appeals.

58. The Commissioner notes that the witness used the Irish Dynamic Yield Model For Forest Management to ascertain his valuations. The Commissioner has considered open source material in relation to this model produced by COFORD and the Commissioner understands that dynamic yield models based on Irish research data and internationally accepted forest modelling principles have been produced for a number of Irish forest tree species and that these models facilitate bespoke forest management planning and practice. COFORD states that *“the models are available to and used by the private forestry sector using a user friendly computer interface called GROWFOR. The models are also integrated into Coillte’s inventory and timber production forecasting”*².

59. Further, the Commissioner notes from information publically available from COFORD that yield models are used “in predicting the future production of timber from forests based on a certain set of circumstances. Dynamic yield models are interactive and facilitate users such as foresters in analysing the potential outcome of different forest management scenarios. For example, a forester may wish to model what the effect of thinning would be every four years compared to every five years. This can be achieved using dynamic yield models. It is an essential part of forest management to be able to forecast the future timber volumes and products that will be produced from forests. This is important in both operational and financial planning for all forest owners. For example, models might be

² <http://www.coford.ie/media/coford/content/publications/projectreports/cofordconnects/SM20-LR.PDF>

used in deciding when a forest road should be built or whether a particular forest for sale is a suitable investment for a pension requirement in twenty years time”³.

60. In particular, the Commissioner notes the following information from COFORD:-

“Reliably constructed growth models that permit forecasting of growth and yield are important for the successful management of forest plantations.

“Irish dynamic yield models are being developed for the most important commercial species. This necessitates the models being used through a computer programme rather than from yield tables, as is the practice with static yield models. The key advantage of dynamic yield models is the flexibility and accuracy that they give to forest managers. Models can be applied to actual plantation characteristics rather than trying to align the plantation to a set management regime outlined in a yield table.

Interactive forest planning model software has been developed to allow growers to input variables related to various scenarios or operations and project the anticipated outcomes of such activities”⁴.

61. The witness’s evidence provided an overview of the approach to be taken to the valuation of woodland, such that it is a scientific approach. The Commissioner considered the evidence relating to the yield class, which is defined as the number of cubic metres per hectare per annum that the crop will produce, and the calculation of same. The Commissioner notes that in order for the Irish dynamic yield models to work, forest inventory data is required in the form of “*species, age, top height (m), stocking (stems/ha) and either basal area (m² /ha) or mean diameter at breast height (cm)*”. From the evidence adduced, the Commissioner understands that this is achieved by the use of a hypsometer. The evidence was that a hypsometer is based on a laser and is similar to a camera or a range finder which is shot to both the top and bottom of the tree which produces the “stand”. The data is inputted into the model. The forest can then be ‘grown on’ to a future age to see what that stand is capable of producing over the rotation of the crop, in addition to the thinning yield over the rotation at various stages. In relation to the 2012 disposal, the witness stated that he calculated a yield class of 20 to 24+ for the Sitka Spruce trees, a yield class of 10 to 14 for the Japanese Larch trees and a yield class of 4 to 8 for the Common Alder trees, with a total valuation of €4.25 million.

62. Turning to the 2016 disposal, the valuation report prepared by the witness is at page 245 of the Agreed Book of Documents. The witness confirmed that again he used the Irish

³ <http://www.coford.ie/media/coford/content/publications/projectreports/cofordconnects/SM20-LR.PDF>

⁴ <http://www.coford.ie/toolsservices/growfor/>

Dynamic Yield Model For Forest Management to produce the yield class and which is set out in detail in his valuation report. He said that this valuation also included visiting the locations of the woodland and taking measurements as aforementioned. In his valuation report, he concludes that the yield class for the various parcels of land which he sets and values separately are 20+, 24+ and 30+ and that the plantations are valued in the total sum of €3,302,000. The valuation report addresses the differing ages of the woodland as per the year of plantation and what valuations are to be applied by the Sawmill.

63. The Commissioner considered it notable that the evidence was that not all plantations had felling licences and in fact, were unlikely to obtain such a licence until after age 35 years. Essentially, the Commissioner understands the evidence to be that it is not permitted to fell the trees, until such time that the trees are in excess of 35 years old, the optimum age being 30 years, and that the only cutting allowed prior to that age is thinning to allow for further growth.
64. The Respondent argued that the Appellant's witness could not provide any detailed evidence in relation to the values that were entered into the model in respect of the valuations for 2012. It is submitted that the Commissioner is *"being asked to simply close your eyes and press a button here and accept that what comes out at the end is the market value for the trees growing on the land at the date of disposal, and there is really very little explanation as to how it works"*. The Respondent submits that the height of the evidence is that the witness put in various unspecified values and came out with a valuation of €4.25 million for the 2012 disposal, which he accepted essentially is the growth potential of the crop that is to be found at that period of time on the lands. The Commissioner does not accept what is contended for by the Respondent, but rather prefers the uncontroversial and uncontested evidence that ██████ received the information as to the age of the trees from the Appellant. The Respondent contends that the valuation is a growth potential figure and not what the trees might reasonably be expected to fetch on a sale in the open market at the date of disposal. The Commissioner considers this contention to be correct.
65. The Commissioner notes the evidence of the Appellant's witness that he accepts that if in 2012 the trees were simply felled on the land and sold, the sum of €4.25 million could not have been achieved as it was a relatively young plantation at that time, with maturity being at the age of 30-40 years post planting. As stated above, it is notable that felling licences may not have been available for the lands, so the Respondent states there is no immediate market value to the trees as timber. Also of note, is that during cross examination, the witness fairly stated that the amount of approximately €11,000 per acre seems "very

bloated” but nevertheless, went on to state that he was not involved in the buying and selling of forestry land, so did not really know.

66. In relation to the 2016 disposal, ██████ gave expert evidence and prepared a report for the purposes of the Appellant’s appeal, which is contained at page 379 of the Agreed Booklet of Documents. The Commissioner notes that ██████ is a practising Forestry Consultant and has worked in the forestry industry for over 20 years. He states that he considers himself to be a Silviculturist. The Commissioner notes that the English dictionary defines Silviculture as the science of growing and managing trees.
67. The Commissioner was grateful to the witness for his extensive evidence in relation to forestry in Ireland and its commercial elements, such as the different species of trees, the products of the forest having regard to different stages of a tree’s lifecycle and the products of the tree which are in demand at the Sawmill. Notably, the witness’s testimony was that valuing trees was a fiscal and scientific exercise and that there is *“a huge amount of science behind our model.....there is a massive amount of time put into collating measurements of growth and taper and assortment sizes.”* In addition, the evidence was that he used digital equipment to take measurements and a software programme, namely either the Irish Dynamic Yield Model or the British Forestry Yield Model. He said that the Irish yield class system is the recommend model to be used, but that as he was forecasting backwards he used the British model which allowed for this. He ascertained the yield class of the parcels of land to be 18, 20, 22, 26 and 34. This is in line with the yield class ascribed to the parcels of land by ██████.
68. Of note, is the testimony of the witness in relation to the question of comparators of other woodland sales in the area. He said that there is a transaction based method which would assume different sales in the area and see what the values of those sales are. However, he stated that in Ireland, not many transactions take place. In relation to the report from the Chartered Surveyors entitled “The Irish Forestry Land Market” dated April 2016, which the Respondent produced in cross examination, he mentioned that he did not place much reliance on the report, as it was based solely on 88 forestry transactions conducted over five years , namely 2011 to 2015 and the variables are enormous, such that *“you have got the variables between the different ages and states of maturity in the crop, you have got the area of the crop, the proximity to markets”*. He stated that the size of the holding is important. The Commissioner notes that the report states that the price per hectare paid for forestry land in 2015 was €9,838 per hectare, which the Commissioner was told is calculated as €3,981 per acre.

69. The Commissioner considers that an important part of the testimony of the witness was his evidence that *“there is a standard manual we use for valuing commercial plantations in Ireland, and I suppose they don't recommend it either....that's produced by COFORD... and one of the things they state, one of the potential problems of using transaction based methods is just that there's not that many transactions that take place”*. He stated that when it does get to a stage where there are enough sales, then he and his colleagues will use the system, as it is a very quick system to use, but *“you would have to look at hundreds of sales before you would have enough per year...”*
70. In relation to the 2016 disposal, he testified that he conducted a site visit, took digital measurements of the top heights and other relevant measurements as outlined above to ascertain the yield class. He stated that he then said that he discounted that back to 2016 through computer modelling. The modelling requires the species, height and age and converts those numbers to yield class. He said value is based on the years remaining until the land is clear-felled.
71. The Commissioner found the witness's evidence credible and it is clear that the witness is an expert in the field of forestry, having regard to the evidence given. The witness also considered alternative suggested approaches put to him by the Respondent, such as the transaction method, and gave reasoned and objective answers as to why he did not consider such alternative approaches to be the preferred method. Also, in discounting reports such as the Chartered Surveyors Report, he relied on a fact based approach to his answers.
72. From the expert evidence adduced, the Commissioner is satisfied that an approved, measurable and scientific approach was taken to the valuation of the trees growing on the land, by two of the Appellant's witnesses. Whilst the Appellant's remaining expert witnesses presented clear and cogent evidence, the Commissioner is of the view that the evidence is not as persuasive on the matter of the valuation of the trees growing on the land, in that neither [REDACTED] had experience valuing woodland. However, the Commissioner does consider it highly relevant that the valuation of the trees, as the residue, is not out of line with the valuations provided by the trained Foresters [REDACTED]. Accordingly, the Commissioner is satisfied that the valuations are consistent vis-a-vis the land and the trees.
73. The Respondent called [REDACTED] as its expert witness. His evidence related to both the 2012 and 2016 disposals. He confirmed that he was previously employed by [REDACTED] but that he had no conflict of interest herein. He stated that he is not a trained Forester, has no experience of valuing volumes of timber, but that he has experience in valuing

woodland by using *“the comparable evidence of sales I have completed myself and if I am not happy with the ones I have completed, I will ring a number auctioneers who may have sold forestry plantations”*.

74. He testified that he is not qualified to measure trees, but that the naked eye will tell you the top leader height of a tree and that based on his experience, if he goes into the centre of a plantation, the growth rate for every year can be ascertained. The Commissioner notes the evidence that when asked, how did he calculate the yield rate of the plantations, he said that *“having purchased many thousands of acres of land on behalf of investors...after such a long period of time, looking at adjoining lands, looking at the development of the crops, I think you know..”* The Commissioner notes it was put to the witness that there is evidence that the yield class is quite a scientific process. The Commissioner has considered the witness’s response that *“from the naked eye, you could see what each class of land is”*.

75. Moreover, the Commissioner notes that the witness did not have comparators in relation to the size of the lands in these appeals nor did he have previous experience of being involved in the commercial sale or purchase of woodland the size of the sales herein. The Commissioner has considered that he did not contemplate economies of scale and notes that he confirmed that it was his opinion that there is no difference in terms of sizes of woodland. His evidence was that *“each acre is worth the same”*. Further, it seems no consideration took place that there was planning permission in place for [REDACTED] wind turbines and a lease for the sum of [REDACTED] available on the lands, the subject of the 2012 disposal. This is at odds with the evidence of [REDACTED]

76. Of note, the witness confirmed that he was not instructed prior to the preparation of his valuation reports, that there was a market value sale of €6,000,000 in 2012. When asked by Counsel for the Appellant during cross examination if that would now change his valuation, he confirmed *“absolutely not”* on the basis of the crop that was there on the day and the underlying land value as of 2012, which would remain the same for him from a forestry perspective. Again, he confirmed in relation to the 2016 disposal that he was unaware that such a transaction took place when he received his instructions in respect of the valuations. He confirmed that despite him now being aware of the transactions, it did not affect his valuations. Of note, he did accept that the market is not just a timber market but also an investment market which needs to be taken into account.

77. The Appellant suggested that the valuations are fundamentally unreliable in the circumstances, as the witness was not aware of actual market sales that took place and

which should have been used as comparators. Moreover, the Commissioner notes from the evidence of the witness that he did not accept that calculating yield class using an implement to measure the trees and software packages such as GROWFOR are far more accurate. His evidence was that he visited the lands and took measurements with the naked eye, as opposed to using digital equipment.

78. From his evidence, the Commissioner understands that in order to complete his valuation of the sales, the witness used what the Commissioner now understands to be the transaction method. The comparators were ascertained having spoken to other agents and colleagues. He confirmed that the volume of the size of the holding did not matter. The Commissioner has considered the suggestion by the Respondent that the transaction method is the preferred method, but considers that the evidence of [REDACTED] is to be preferred, such that he was clear that whilst it is a simpler method, there must be a market of comparators in order for the transaction method to be reliable.
79. The Appellant has suggested that it is fundamentally detrimental to the witness's evidence and report that he was unaware of the disposals prior to the preparation of his valuation reports. The Commissioner agrees with that submission. The Commissioner considers it to be highly relevant that his reports were prepared in the absence of instructions that there were two open market sales namely in 2012 and 2016, for values well in excess of the comparators used by the witness.
80. In light of this, the Commissioner found the evidence of the Respondent's witness to have little persuasive value. The Commissioner considers that the witness was not particularly objective or impartial in his approach, in circumstances where the witness was unwilling to consider his opinion in light of new facts arising. The Commissioner considers that he did not provide any reasoned answers when opposing approaches were put to him. In particular, he refused to consider amending his views and/or valuations when he learned of the 2 disposals herein or that the within disposals had any bearing on his opinions, nor was there any objective or reasoned response offered.
81. In addition, his evidence was that he visited the forest and used the naked eye to conduct measurements. When it was put to him that other witnesses suggested that the valuation of trees is a highly scientific exercise, he did not agree. The Commissioner has considered the witness's response, such that he refused to accept that advances in technology and an approved methodical approach is preferable, not to be a reasoned or objective response.
82. The Commissioner agrees with the evidence of [REDACTED] that we are discussing the value of timber and notes his evidence that "*millions of cubic metres of timber are traded in*

Ireland every single year and have been for a long, long period of time. Surely that means that using the value of that asset in terms of timber value is going to be far more accurate using COFORD, which our National Council For Research, spent a huge amount of money coming up with a guideline for us to use... and if you look at the guideline...you will see that it clearly recommends not using transactions for market value”.

83. Of importance, when the Commissioner queried with the Respondent whether it had the benefit of a valuation report when raising the amended assessment in 2017, in respect of the 2012 disposal, Counsel on behalf of the Respondent confirmed that the report was prepared subsequently, but formed the basis for the amended assessment that issued in 2021, in relation to the 2016 disposal.

84. In contrast, the Commissioner found evidence of the expert witnesses presented by the Appellant to approach the matters at issue in a reasoned and objective manner. The Commissioner is mindful of the recent decision in *Duffy* wherein at paragraph 91 of that decision Noonan J., in referring to a previous decision of McCracken J., states that

“The overriding duty of the expert is owed to the court and includes the duty to provide an objective opinion. Objectivity by definition requires that one has regard to both sides of the case. An essential component of the duty of the expert is to ascertain all relevant facts whether they support the client’s case or not. This duty has been reiterated many times. In Fitzpatrick v. DPP (Unreported: 5 December 1997), McCracken J. said:

“It is my strongly held view that where a witness purports to give evidence in a professional capacity as an expert witness, he owes a duty to ascertain all the surrounding facts and to give that evidence in the context of those facts, whether they support the proposition which he is being asked to put forward or not.”

85. The question herein is the appropriate value to be apportioned to the woodland, specifically the trees growing on the land, in accordance with section 564 TCA 1997. In simple terms, the exercise herein is to ascertain the market value of the asset, the asset being trees, so that the Commissioner can consider whether the Appellant is correct in his CGT computation. The Commissioner accepts, as aforementioned, that there were two open market transactions for the sum of €6,000,000 in 2012 and the sum of €4,000,000 in 2016.

86. The Commissioner considers the evidence of [REDACTED] to be highly relevant and persuasive for the reasons set out above. The Commissioner heard lengthy evidence in relation to the detailed, methodical and scientific approach to valuation of

woodland. Again, importantly, the evidence was that the yield class and valuations have nothing to do with the market price of woodland, it is to do with the value of timber that you would expect to realise over the life of the forest. The Commissioner accepts that evidence and moreover, is of the view that this is what is relevant in the within appeal for the purposes of section 564 TCA 1997, the value of the trees growing on the land.

87. The Commissioner has considered the Respondent's submission, such that the evidence was in relation to the growth potential figure and not what the trees might reasonably be expected to fetch on a sale in the open market at the date of disposal. The Statutory scheme refers to the growing of the trees and consequently, the Commissioner is satisfied that this envisages the valuation of not just trees, but growing trees, having regard to a literal interpretation. In accordance with judicial guidance on statutory interpretation, each word must be interpreted and given a meaning in a statute. There is abundant authority for the presumption that words are not used in a statute without meaning and are not superfluous, and so effect must be given, if possible, to all the words used, for the legislature must be deemed not to waste its words or say anything in vain. The legislation refers to the value of growing trees. The ordinary meaning of growing is increasing in size or become greater over time. The Commissioner considers it relevant that a number of the lands did not have felling licences and the uncontroverted evidence that it was unlikely that such a licence would be available until the trees reached a certain age. This suggests to the Commissioner that when valuing growing trees, some element of future value of the growth of the tree must be relevant in any sale/purchase.

88. On a disposal of woodlands, that part of the consideration which relates to the value of the trees growing on the land is to be excluded from the CGT computation. Whilst the Respondent contended for the transactional method, its valuations carry little persuasive value, for the reasons stated above. The Commissioner is satisfied that at the time of disposal of the subject lands, the Appellant commissioned contemporaneous valuation reports for the 2012 disposal valuing the growing trees at approximately €11,900 per acre resulting in an overall value of €4,380,000 for the trees and for the 2012 he commissioned valuation reports valuing the growing trees at €11,270 per acre with an overall value of €3,302,000 for the trees. The Commissioner is satisfied based on the evidence adduced that the valuation of the trees is based on *inter alia* location, size, surroundings, condition, current use, zoning and planning, existing accommodation, services, title/tenure, the value of wood/timber, the property being well managed with grants and premia available.

89. As stated above, the burden in a tax appeal rests firmly on the Appellant to show that the tax is not payable. Moreover, in accordance with the decision of the Supreme Court in

Kenny Lee v Revenue Commissioners [IECA] 2021 18, 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.

90. Having regard to the submissions, legislation, evidence, including the expert evidence adduced in these appeals, the Commissioner finds that the Appellant has shown on balance that the apportionment in his computation for the purposes of CGT, in terms of the trees growing on the land, was not incorrect. The Commissioner is mindful of the test to be applied as per the provisions of section 544(5) TCA 1997 is “...*the method of apportionment adopted shall,....be such method as appears to...on appeal the Appeals Commissioners to be just and reasonable*”. The Commissioner is satisfied that the apportionment in relation to the 2012 and 2016 disposals is just and reasonable, having regard to the evidence adduced in the within appeals. The Commissioner is satisfied that the apportionment occurred on the basis of contemporaneous valuation reports prepared by independent expert valuers, including valuations by expert Foresters, employed on the Appellant’s behalf, all of which are consistent in terms of the valuations ascribed to the woodland and/or tress. Accordingly, the Respondent was incorrect to raise the assessments.

Determination

91. As such and for the reasons set out above, the Commissioner determines that the Appellant has succeeded in showing that the tax is not payable. Therefore, the Notices of Amended Assessment to CGT dated 27 November 2017 and 10 December 2021 in the sums of €800,400 and €629,158 respectively, shall both be reduced to nil.

92. 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 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
11 May 2023