AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

147TACD2023

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against a Notice of Assessment to Capital Gains Tax ("CGT") raised by the Revenue Commissioners (hereinafter "the Respondent") in respect of the tax year 2013. The Respondent issued its Notice of Assessment on 21st March 2019.

2. The amount of CGT in dispute is €38,319. The Appellant makes his appeal in accordance with the provisions of section 945 Taxes Consolidation Act 1997 ("TCA 1997").

3. The hearing took place in person on 27th March 2023. The Appellant was represented by his solicitor and his tax agent. The Respondent was represented by Counsel, its solicitor and two members of its staff.

Background

4. The Appellant submitted his 2012 Income Tax Return ("Form 11") in a timely manner. Included within that return was details of a CGT transaction which the Appellant deemed was referable to that year. The recorded CGT transaction detailed gross consideration received of €134,375 and a chargeable gain of "nil".

5. On 28th September 2016, the Respondent issued the Appellant with an audit notification letter. The letter advised that the Respondent was auditing the Appellant's Income Tax, CGT and Value Added Taxation returns for the period 1st January 2012 to 31st December 2014.

6. During the course of the audit, the Appellant advised the Respondent that the he had leased lands and the underlying leases on those lands contained options ("the options") for the Appellant to purchase the leased lands. The options provided on the expiration of the leases, the Appellant could buy the lands for an agreed consideration of £91,000 (ninety one thousand Irish pounds).

7. In response to queries raised on the options, the Respondent received a letter from the Appellant's agent on 21st December 2016. Attached to that correspondence was a letter from the Lessor's solicitor dated 15th December 2016. That letter stated following the death of the Lessor the Appellant had instigated Circuit Court proceedings against the deceased's personal representatives seeking compensation to buy out the options on the leased lands.

8. As an agreement was reached between the Appellant and the deceased's personal representatives, the matter did not go before the Court. The agreement provided in return

for forfeiting the options, the Appellant would receive 35% of the net proceeds of sale of the leased lands when they were subsequently sold.

9. The letter further advised that an amount of €134,375 was paid to the Appellant in respect of his portion of the sale of the lands on 24th July 2013.

10. The Respondent's formed the view that the monies received by the Appellant on 24th July 2013 was in respect of compensation for the surrender of rights of an asset and as such, was within the charge to CGT.

11. The Appellant agrees that the consideration is within the charge to CGT but asserts that the Respondent erred in its calculation of the CGT liability.

12. As the Appellant and the Respondent ("the parties") could not agree on the appropriate CGT liability, the Respondent computed what it believed was the correct liability and issued its Notice of Assessment to CGT reflecting that liability on 21st March 2019.

13. The Appellant who was not in agreement with the Notice of Assessment submitted his appeal to the Commission on 19th June 2019.

14. Section 945 (1) TCA 1997 required the Appellant to have submitted his appeal within 30 days of receiving the assessment. However, as there was a change of agent on behalf of the Appellant at the time the Notice of Assessment issued, there was some difficulty with his new agent receiving the assessment which resulted in the Appellant submitting his Notice of Appeal outside the stipulated timeframe. Given this position, the Commission agreed to accept the appeal as a late appeal under the provisions of section 949O TCA 1997.

Preliminary issue

15. In advance of the appeal hearing on 27th March 2023, the Appellant's agent wrote to the Commission and the Respondent on 24th March 2023. The correspondence sought to include an additional ground of appeal being that the CGT assessment issued out beyond the four year time period provided under section 959Z (3) TCA 1997 and as such was void. By way of reply on the same day, the Respondent issued a reply which objected to the Commission accepting the additional ground of appeal.

16. As the respective correspondences were received the last business day before the hearing (the correspondence being received on a Friday and the hearing scheduled for the following Monday), the Commissioner advised the parties at the commencement of the hearing that he would hear the parties submissions on the admissibility of the

additional ground of appeal and make a preliminary ruling in advance of deciding if additional submissions were required. The parties' submissions on this preliminary issue are considered below.

Appellant

17. The Appellant submits that the transaction giving rise to the issuance of the CGT assessment took place in 2013 and the Respondent did not issue its assessment until 21st March 2019. As such, the Appellant submitted that the Notice of Assessment issued out beyond the four year time frame permitted under section 959Z (3) TCA 1997 and as such is void.

18. The Appellant submitted that the Respondent was not required to abide by the "four-year rule" in very limited circumstances none of which prevailed in the Appellant's appeal and as such this was further evidence that the Commission should find the Notice of Assessment was void.

Respondent

19. The Respondent submitted that the requirements for a valid Notice of Appeal were set out within section 949I (2) TCA 1997 which states that the "*Notice of Appeal shall specify…the appealable matters in respect of which the appeal is being made*" and should set out "*the grounds for the appeal in sufficient details for the Appeals Commissioner to be able to understand those grounds and any other matters for the time being as stipulated by the Appeals Commissioner for the purpose of this subsection.*"

20. The Respondent stated that section 949I (6) TCA 1997 continues:

> "*The party shall not be entitled to rely during the proceedings on any ground of appeal that is not specified in the Notice of Appeal unless the Commissioners are satisfied the grounds could not reasonably have been the stated in the notice*."

21. The Respondent noted that the Appellant's solicitor was only engaged shortly before the hearing of the appeal but at the time of making his appeal on 19th June 2019, he had professional representation from his tax agent, who submitted the appeal on his behalf.

22. The Respondent submitted that as the grounds of appeal detailed in the Appellant's Notice of Appeal did not include any reference to time limits, then in noting the use of the word "shall" in section 949 I (2) TCA 1997, it was incumbent on the Commission to refuse the Appellant's request for a new ground of appeal to be admitted.

23. Furthermore, the Respondent submitted that as it and the Commission were only informed of this request on the eve of the hearing, almost four years after the Notice of Appeal was lodged with the Commission, then this was evidence that the Commissioner could not reasonably conclude that it was justifiable in admitting this new ground of appeal.

24. In support of the Respondent's submission, Counsel opened the case of *Thomas McNamara v Revenue Commissioners* [2023] IEHC 15 ("*McNamara"*). By way of background Counsel stated that the case concerned the meaning of "current use value of land" but contained important findings in respect of the admissibility of grounds of appeal not stated in the original Notice of Appeal.

25. The Respondent's Counsel opened paragraph 23 of that judgment which sets out the grounds of Mr McNamara's case as follows:

> "*In relation to the Commissioner's finding that the appellant was out of time to raise the point that the defendant was out of time to make an amended assessment to CGT; it was submitted that the Commissioner had been wrong in law to hold that that ground of appeal could have been included in the appellant's amended Notice of Appeal dated 22nd October, 2014, when the matter was governed by the decision in Revenue Commissioners v. Droog [2016] IESC 55, in which judgment was not handed down by the Supreme Court until 6th October, 2016."*

26. Counsel set out the Respondent's submissions at paragraph 34 of that judgment:

> "*On the issue of the non-inclusion of the time point in the Notice of Appeal, counsel submitted that the decision of the Supreme Court in the Droog case was not relevant, as it dealt with a different point altogether. Therefore, the Commissioner was correct to hold that there was no reason why the time bar point could not have been raised in the Appellant's Notice of Appeal.*"

27. Counsel continued that paragraph 38 and 40 of that judgment considered the Notice of Appeal in which it stated:

> "38. *Section 949I deals with Notices of Appeal. It provides inter alia that a Notice of Appeal shall specify the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds. Subsection 6 of that section provides that a party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the Notice of Appeal, unless the Appeal*

Commissioners are satisfied that the ground could not reasonably have been stated in the notice.

…

40. Section 957(4) provides that where an appeal is brought against an assessment, or an amended assessment, made on a chargeable person for any chargeable period, the chargeable persons shall specify in the Notice of Appeal (a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved and (b) the grounds in detail of the chargeable persons appeal as respects each such amount or matter. Subsection 6 goes on to provide that the chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the Notice of Appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice."

28. Finally, Counsel for the Respondent opened paragraph 88 of the judgment in which the Court held:

"*The court is satisfied that the Commissioner was correct to hold that the time limitation ground of appeal, which concerned the time within which an amendment could be made to an assessment, was not at issue in the Droog case. Accordingly, she was correct to hold that that ground of appeal could have been raised in the Appellant's Notice of Appeal. Therefore, she was entitled to find that the appellant was out of time to raise that as a ground of appeal at the hearing before her in 2017*."

29. The Respondent's Counsel submitted that *McNamara* supported her submission that unless reasonable grounds were presented to the Commission which would justify the Appellant's late notification of the request to admit the additional ground of appeal, then it was incumbent on the Commission to refuse the Appellant's request.

Analysis

30. The Appellant submitted his Notice of Appeal ("the Notice") to the Commission on 19th June 2019. That Notice did not contain any grounds which stated that the Notice of Assessment to CGT in respect of the tax year 2013, had issued out beyond the four-year time period provided under section 959Z (3) TCA 1997.

31. The Commission were first notified of this additional ground of appeal by way of correspondence received from the Appellant's agent on the eve of the hearing, being 24th March 2023.

32. For the Appellant's ground of appeal to be admitted, he is required in accordance with the provisions of section 949I (6) TCA 1997 to satisfy the Commissioner why that ground of appeal could not have reasonably been stated in the Notice.

33. The recent High Court case in *McNamara* emphasised the importance of taking due care when preparing for cases before the Commission. It further upheld the Commissioner's Determination in which she refused the Appellant's request to admit an additional ground of appeal on the basis that due care was not taken in submitting the Notice of Appeal and no circumstances were presented which demonstrated that the omitted ground of appeal could not reasonably have been included in that Notice.

34. The Commissioner notes that when the Appellant submitted his Notice, he had the benefit of the services of a professional accountant in so doing. The Commissioner further notes that the Appellant's solicitor, who was instructed close to the hearing of the appeal, was the individual who noted that the time-limit issue was not included in the Notice.

35. That having said, the Commissioner, who must abide by fair procedures for each of the parties in an appeal, is not satisfied that the time-limit issue could not reasonably have been included within the Notice. To find in favour of the Appellant would disregard the findings in *McNamara* and provide precedent for other Appellants before the Commission to engage in the practice of submitting submissions in close proximity to the hearing. Had the Appellant's solicitor submitted his request upon appointment, the Commissioner may have reached a different finding, but as he did not the Commissioner is not satisfied that the Appellant could not reasonably have included the time-limit as a ground of appeal in the Notice.

Finding and Commentary

36. The Commissioner issued his finding at the hearing. That finding was as the Appellant did not satisfy the requirements of section 949I (6) TCA 1997, the time-limit ground of appeal was not to be admitted to the hearing of the appeal and therefore, the Notice of assessment which issued on 21st March 2019 is valid.

37. After the Commissioner delivered his finding on the preliminary issue, the Appellant and his agents requested a short recess which was granted. Following that recess, the Appellant's solicitor stated that following consultation with the Appellant, he wished to state a case to the High Court on the Commissioner's findings in accordance with the provisions of section 941 TCA 1997.

38. The Commissioner advised that a case could only be stated to the High Court on the issuance of the Commissioner's Determination but if the Appellant had no further submissions to make to the Commission, subject to the Respondent's submissions, he would issue a Determination on that basis.

39. Following a discussion with the Appellant's agents in which the Commissioner suggested that it might be more appropriate for the Appellant to make submissions on the substantive issue under appeal, since in the event of the matter being referred to the High Court it could adjudicate upon the totality of the Appellant's appeal, the Appellant's agents requested that the appeal be adjourned for a period of three months to facilitate settlement discussions with the Respondent.

40. The Commissioner asked the Respondent to make submissions on this request. The Respondent stated that it was of the belief that as unsuccessful settlement discussions occurred there was no benefit in the appeal being adjourned. Furthermore, the Respondent stated that as the appeal was in being since 2019, then the Appellant had sufficient time in which to conclude settlement negotiations but had chosen not to adapt that course of action.

41. On that basis, the Commissioner advised the Appellant as it was incumbent on the Commission to perform its duties in an effective manner and as there was no benefit in adjourning the appeal, then his request was being refused. Following subsequent discussions, the Appellant stated that he wished to make additional submissions to the Commission on the substantive issue under appeal and requested that the appeal proceed on that basis. As both the Commissioner and the Respondent agreed to this course of action the appeal proceeded accordingly.

Documentation presented to the Commission

42. Included within the documentation presented to the Commission by the Respondent was the following:

    42.1. A copy of an executed lease between [redacted] and the Appellant dated 1st May 1997. The lease referenced lands owned by [redacted] at "[redacted]" and related to agricultural lands which consisted of "15 acres, two roods and 29 square perches". The lease provided that the Appellant was entitled to lease the lands from [redacted] "for the term of ten years as from the 1st day of May 1997 yielding and paying to the owner the said term of yearly rent of £50". Further down the lease it stated that the Appellant was entitled to

purchase the land, on expiration of the lease, for the sum of £1,000. The lease was witnessed by [redacted].

42.2. A copy of a second executed lease between [redacted] and the Appellant also dated 1st May 1997. This lease referenced lands owned by [redacted] at "[redacted]" and related to agricultural lands which consisted of "101 acres and ten square perches". The lease provided that the Appellant was entitled to lease the lands from [redacted] for the term of seven years as from the 1st day of May 1997 yielding and paying the owner during the said term the yearly rent of £4,000. Similarly within that lease it provided an option for the Appellant to purchase the land, upon expiration of the lease, for the sum of £90,000. This lease was also witnessed by [redacted].

42.3. A letter from the [redacted] Estate solicitors dated 15th December 2016 which stated:

> ""*We* [redacted] *Solicitors acting in the estate of the late* [redacted] *deceased hereby certify that following a circuit court action of the agreement reached was that 35% of the net proceeds of the sale of the farms of* [redacted] *would be paid to* [redacted] *in settlement of his claim arising out of the lease.*
>
> *We confirm that the amount to* [redacted] *via his solicitor,* [redacted]*. amounted to 134,375.40 and a cheque in this amount is issued on 24th July 2013...*"

42.4. A letter from the Appellant's then accountant, [redacted] dated 21st December 2016 which stated:

> "*The calculation is as follows: The sum granted for €134,375.40*."
>
> Following a listing of costs associated with the disposal, it continued:
>
> "*Then the net proceeds are €115,020.75…*"

42.5. A copy of a cheque dated 24th July 2013 made payable to the Appellant from his solicitor in the sum of €134,375.40.

42.6. A copy of the Appellant's 2012 Income Tax return. Included within the CGT section of that return it stated:

"*Number of disposals one. Agricultural lands building. Aggregate area in hectares 19.8. The aggregate consideration is €134,375….liability €0*".

Witness Evidence – The Appellant

43. The Appellant stated that he got to know the [redacted] family in or around 1997. He stated that he had originally bought a small farm from the [redacted] family in the 1980's but only got on friendly terms with them when he did some mechanical works on their tractor.

44. The Appellant stated during a conversation with one of the brothers, [redacted] that he asked the Appellant if he could recommend an accountant to look after the accountancy requirements of his farmlands. The Appellant recommended his then accountant, [redacted] and [redacted] subsequently looked after the accountancy requirements for both the [redacted] and the Appellant.

45. The Appellant stated that the other [redacted] brother, [redacted] was "mad for farming" but as he was unable to attend to his duties, owing to poor health and old age, he requested the Appellant to assist him with the maintenance and feeding of the cattle on the lands.

46. The Appellant explained that he assisted [redacted] in looking after the cattle for a period of time. Subsequently, the [redacted] approached him and requested him to lease their farmlands and they "talked money". The Appellant further explained owing to the size of the farm, he thought that he would be unable to afford to lease the lands and he expressed his reluctance on that basis. This reluctance was short lived as the [redacted] agreed an affordable amount with the Appellant and their accountant, [redacted] drew up leases between the Appellant and the [redacted]

47. The Appellant stated that the arrangement worked well and after about three months, the [redacted] approached him and stated that they wished to sell him their lands when the leases expired. The Appellant stated that the [redacted] priced the land "without chat there and then" and said that they wanted £90,000 for the farm and £1,000 for "the hill". The Appellant agreed to this price and subsequently, [redacted] drew up revised leases on the lands which included the option to purchase the lands for £91,000.

48. The Appellant advised that everything went well for the first year and going into the second year of the lease, [redacted] got "kind of rowdy" with him and stated "I want you to leave". The Appellant stated that he was shocked with this outburst and said "whatever you think, I am not going to fight with you and I want no handling with you".

49. The Appellant advised that he left the lands and the next day his cattle were removed from the leased lands and put onto his small farm which he had originally purchased from the [redacted] As the cattle were overcrowded on his land, the Appellant stated that he approached [redacted] to discuss the matter and [redacted] stated that "he ([redacted] shouldn't have done that" and left the land. Following this statement which the Appellant took as an apology, he stated that he took the cattle from his small farm and put them back onto the leased lands.

50. The Appellant stated that he went up to the leased lands one morning about a fortnight later to tend to the cattle and when he arrived he heard the discharge of a shotgun and the "hail fell over the top of his head down the field". He stated that he contacted a farmhand who did occasional work for him for "backup" and upon his arrival they tended to looking after the cattle. During this process, the Appellant stated that [redacted] approached him and the farmhand with a sword and a struggle ensued which resulted in the sword being removed from [redacted].

51. Following this alarming incident, the Appellant stated that he approached his accountant, [redacted] and said "we are going to have to get out of this", to which [redacted] advised "you can't get out of it, he will follow you for breaking the lease". [redacted] also advised the Appellant to "call the Guards" and the Gardaí subsequently attended to the [redacted] and removed the shotgun and sword from them. The Appellant further stated that the Gardaí advised him that he had to "stay on" the lands.

52. The Appellant stated that as he was "stuck with the cattle" he stayed on the lands until that November when he took the decision to sell the cattle and vacate the lands. He said following his withdrawal from the lands that the [redacted] and their nephews approached him and "advised him" to remain away from the leased lands.

53. Over the following two to three years when both of the [redacted] brothers passed away, the Appellant advised that he contacted a solicitor to issue proceedings against the [redacted] estate seeking to enforce the option to purchase the [redacted] lands. The Appellant stated that those proceedings subsequently settled between him and the Executor of the [redacted] Estate whereby it was agreed that the leased lands would be sold and the Appellant would be entitled to receive 35% of the net proceeds.

54. The Appellant stated, following receipt of the funds, he contacted [redacted] and enquired about the tax due on the monies he received. The Appellant advised that [redacted] stated that there would be "very little tax to pay on it, you might have to pay a few thousand but that will be it".

55. The Appellant stated that he was unaware at that time that [redacted] had submitted a Capital Acquisitions Tax (CAT) return to the Respondent on the basis that the funds received on the land sale were a "gift or inheritance". The Appellant further stated that he was unaware that the Respondent contacted [redacted] and advised him that a CAT return was inappropriate as the transaction fell within CGT, and as such a CGT return was required to be submitted on the Appellant's behalf.

56. The Appellant stated that he only became aware he had a CGT liability when [redacted] telephoned him one Saturday morning and stated "you better come down and bring the cheque book – you have €39,000 to pay". The Appellant stated that he was shocked to hear of this liability and he stated to [redacted] that he wanted to personally contact someone in the Letterkenny tax office to discuss the position with them.

57. The Appellant advised that he was told this course of action was "not the way it was done" and he left matters alone until a couple of years later when he was contacted by the Respondent looking to do an audit into his tax affairs. The Appellant stated that he did not instruct and was unaware that [redacted] subsequently submitted a nil CGT return on his behalf to the Respondent.

58. The Appellant advised that he subsequently dispensed with [redacted] services and appointed his current accountant in place. He stated that the Respondent attended his property at the commencement of the audit and he instructed [redacted], who was also in attendance, to provide the Respondent with his books and records.

59. The Appellant submitted that upon receipt of the books and records, the Respondent handed them back and said that they could not make "head nor tail" of them. The Appellant stated that the Respondent left his property with the advice that "he should pay the tax due and that's it".

60. The Appellant submitted that the day following the visit, a representative of the Respondent telephoned him at 10am the following morning and advised him that he should "get rid of his current accountant as he is going to run you into more problems" and that was the last he heard from the Respondent.

61. The Appellant stated that he advised his accountant of this telephone discussion and his accountant advised him to no longer have contact with the Respondent as he was looking after matters. The Appellant stated that he stuck to this advice and had no more involvement with the Respondent until today (the day of the hearing).

62. Under cross examination, the Appellant stated that:

62.1. The two leases provided to the Commission were the leases that he had entered into with the [redacted] and he did not dispute the terms or contents of those leases.

62.2. That he had instigated Circuit Court proceedings against the [redacted] Estate owing to an alleged breach of rights under those leases and subsequently received the sum of €134,375.40 in July 2013, before the deduction of his solicitor's fees and outlays. The Appellant confirmed that the matter did not "trouble the courts" and the sum received by him was by virtue of a settlement agreement reached between him and the Estate representatives.

62.3. That the sum of €134,375.40 was made to him by the Estate representatives in respect of the forfeiture of the rights granted to him to purchase the leased lands upon expiration of those leases.

62.4. That his 2012 Income Tax return recorded a CGT disposal of agricultural lands in the sum of €134,375, a net gain of nil and the "relief section" of the return was blank.

62.5. That following the commencement of the Respondent's audit into his taxation affairs on 28th September 2016, his then agent cancelled a number of meetings with the Respondent and/or refused to provide the Respondent with requested documentation.

62.6. That he received a letter from the Respondent on 2nd February 2018 which stated:

> "…*It is imperative at this stage that this audit is progressed. In order to do so documentation must be made available to me for inspection. Please find attached a copy of correspondence which issued... Please arrange to have all available records, including all linking documents for the period under the audit.*"

Submissions

Appellant

63. The Appellant submitted that the asset disposed of by the Appellant was not the underlying lands but rather a "chose in action". A "chose in action" is "a right of proceeding in a court of law to obtain a sum of money or to recover damages"[1].

[1] https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095610181

64. In the Appellant's case he submitted that the chose in action was the interest that was derived from the breach of the lease covenants entered into between the Appellant and the [redacted] on 1st May 1997 which provided the Appellant with the right to buy the underlying lands for the sum of £91,000.

65. The Appellant submitted for the CGT to be calculated on the monies received in respect of the settlement of the chose in action, it required the value of the asset when the Appellant acquired the rights to be deducted from the disposal consideration and after deduction of the Appellant's personal exemption amount, the CGT was calculated accordingly.

66. The Appellant submitted that the date the Appellant acquired the rights was not the date he entered into the lease which contained the right to purchase covenant but rather in 1998/99 which was the date the [redacted] indicated that they were not going to honour the option agreements and refused to accept the second year's rent payments.

67. The Appellant further submitted that the value to be placed on the acquisition of the chose in action was based on the value of the lands in May 1998 which was the date the Appellant was "forced off" the lands. The Appellant further submitted that as the Appellant ultimately got 35% of the value of the lands (in settlement of the court proceedings) then it was reasonable to provide that the appropriate base cost for the CGT disposal was 35% of the value of the lands in 1998.

68. The Appellant stated that he calculated the value of the land in 1998 by relying on valuations of the lands which were obtained by the parties in the Circuit Court proceedings and multiplying that figure by 35%, to represent the Appellant's "share". The Appellant stated that the resultant figure of €59,259 was adjusted by 26% inflation to cover the time lapse between the date the valuation was obtained for the then court proceedings and the date the Appellant acquired the "rights", being May 1998. In coming to the inflation rate used of 26%, the Appellant advised that it had used the Institute of Professional Auctioneers and Valuers ("IPAV") chart which provided land specific inflationary charts for periods of time. A copy of this chart was handed to the Commissioner and the Respondent's Counsel.

69. The Appellant stated the effect of applying these adjustments was that he calculated a base cost of €74,666, which when deducted from the settlement figure received by the Appellant resulted in a chargeable gain of €40,000 on which there was CGT payable of €13,316 on that. The Appellant stated that "you can float around the valuations but roughly that is what is due".

70. The Appellant submitted that the Respondent's position that the chose in action had no value was simply not credible given that the Appellant could have sold that chose in action for valuable consideration at any stage after it came into existence. Thus, the Appellant submitted that the Respondent had erred in its calculation of the Appellant's CGT liability, by virtue of omitting the base cost of the chose in action and as such the Commission should uphold the Appellant's calculations of liability and reduce the assessment accordingly.

Respondent

71. The Respondent submitted that the Appellant's submissions in which it stated that the Respondent had erred in its calculations and misinterpreted the legislation was misguided.

72. The Respondent submitted that the relevant sections of the TCA 1997 are section 535 TCA 1997 which is the relevant provision with regard to a disposal where capital sums are derived from an asset and section 536 TCA 1997 which provides relief for certain capital sums which are not deemed a disposal for CGT purposes.

73. The Respondent submitted its position was that the Appellant received monies in compensation for the forfeiture or surrender of his rights in an asset and consequently, a disposal for CGT purposes arises. The Respondent submitted that as the Appellant did not claim any reliefs on his submitted tax return or during the course of the appeal, then the reliefs under section 536 TCA 1997 did not arise.

74. The Respondent opened the provisions of section 535 (1) TCA 1997 which defines a "capital sum" as "*any money or money's worth not excluded from consideration taken into account in the computation of the gain.*" The Respondent submitted that the provisions of section 535 TCA 1997 govern disposals where a capital sum is derived from an asset.

75. The Respondent submitted that section 535 (2) (a) TCA 1997 specifically provides for the forfeiture or surrender of rights to be considered a disposal for CGT purposes, it states:

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

iii. capital sums received in return for forfeiture or surrender of a right or for a refraining from exercising a right,"

76. The Respondent further opened section 536 TCA 1997 which provides:

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

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

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

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

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

(2) Where an asset is lost or destroyed and a capital sum received as compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is, within one year of receipt or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if –

(a) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure

that on the disposal neither a loss nor a gain accrued to such owner, and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under paragraph (a).

(3) A claim shall not be made under subsection (2) if part only of the capital sum is applied in acquiring the new asset; but, if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if – a) the amount of the gain so accruing were reduced to the amount of that part of the capital sum not applied in acquiring the new asset (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and b) the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a).

(4) This section shall not apply in relation to a wasting asset."

77. The Respondent submitted having regard to the provisions of section 535 and section 536 TCA 1997 that the Appellant had not erred in its interpretation of those provisions and as the Appellant's receipt of the settlement sum was within the charge to CGT.

78. The Respondent stated that the sum received by the Appellant was deemed capital rather than income in nature. In support of this submission, the Respondent opened the case of *London and Thames Haven Oil Wharves v Attwooll* [1967] 43 TC 491 ("*Attwooll*). The facts of the case were that the taxpayer's jetty was damaged due to the negligent handling of an oil tanker. The monies compromised of damages for the jetty and consequential loss as the jetty was unusable for an extended period of time. The Court of Appeal was asked to consider the nature of the consequential loss as to whether it was capital or revenue in characteristic. The Court found that the consequent loss to be trading income as it was not received in respect of the sterilisation of the capital asset. Diplock L.J. held that:

"*These cases are to be contrasted with cases where compensation is paid for the destruction or permanent deprivation of the capital asset used by a trade for the purpose of his trade. There the asset thereafter ceased to be one by the use or exploitation of which the trader carried on his trade. As a result of such destruction or deprivation the trade ipso facto abandons that part of his trade which involves the use of the capital asset of which he has been deprived … Even if the compensation payable for the loss of the capital asset has been calculated in whole or in part by taking into consideration what profits he would have made had be continued to carry on a trade involving the use or exploitation of the asset, this does not alter the identity of what the compensation is paid for, to wit, the permanent removal from his business of a capital asset which otherwise have continued to be exploited in the business.*"

79. The Respondent submitted having regard to the facts in *Attwooll,* it was evident that the compensation received by the Appellant for the forfeiture or surrender of his rights with regard to the option to purchase the leased lands was capital in nature and accordingly liable to CGT.

80. The Respondent submitted that compensation received will always be considered capital in nature in circumstances, where the compensation is for a capital loss. The Respondent continued that without specific legislation, compensation received for the loss, destruction or permanent deprivation of a capital asset could be interpreted that no disposal took place for the purpose of CGT. The Respondent submitted that such legislation was introduced by section 535 TCA 1997 which deems a disposal of an asset to have occurred when a capital sum is derived from an asset, notwithstanding the fact that no asset was acquired by the person paying the capital sum. The Respondent submitted that this includes monies received for the forfeiture or surrender of a right under section 535(2) (a) (iii) TCA 1997.

81. The Respondent opened the case of *Zim Properties v Procter* [1985] STC 90 ("*Zim*") in which the Court considered the UK equivalent of section 535 TCA 1997. In *Zim*, the taxpayer brought a negligence claim against their solicitors regarding a delayed property transaction. The claim was settled and the taxpayer was assessed for corporation tax. Warner J. considered the derivation of the sums from the asset and whether it was direct or indirect. He stated that:

"*… [t]he true view was hinted at by Fox J in O'Brien v Benson's Hosiery (Holdings) Ltd when he referred … to the 'reality of the matter'. One has to look in each case for the real (rather than the immediate) source of the capital sum."*

Counsel continued that the Court held that the amount received by the taxpayer was derived from their right to sue its solicitors for negligence rather than the properties themselves and that the right to bring an action to enforce a claim constituted an asset for CGT purposes.

82. On foot of the *Zim* decision, Counsel continued, the then Her Majesty's Revenue and Customs ("HMRC") issued guidance in its Capital Gains Manual (CG12985) regarding the operation of section 22 of the Taxation of Chargeable Gains Act, 1992 which is the English equivalent of section 535 TCA 1997. The manual states:

> "*The meaning of "derived from assets" was considered in Zim Properties Ltd v Proctor 58TC371 (at 391). In that case the court concluded that capital sums within the meaning of the general words in section 22(1) may be derived from assets which are not the immediate source of the receipt. This was considered to be consistent with an earlier view suggested the House of Lords in O'Brien v Benson's Hosiery (Holdings) Ltd 53TC241, when the court referred to the need to consider "the reality of the matter". It was also followed by the Court of Appeal in Pennine Raceway Ltd v Kirkless Metropolitan Council (No. 2) [1989] STC 122 (at Ralph Gibson LJ at 133). The principle which has emerged from case law is that in every case it is necessary to look for the real (rather than immediate) source of the capital sum … For example, a capital sum received as compensation for physical damage to an asset should be treated as having been derived from the asset itself and not from any statutory right to compensation or any other right of action that came into existence as a result of the damage.*"

83. The Respondent submitted, following the foregoing, it is evident that compensation payments whether revenue or capital in nature are subject to tax unless there is a specific exemption or relief therefrom. Counsel stated that section 536 TCA 1997 will not deem a capital sum compensation received as a disposal in circumstances where an asset has been lost or destroyed. In those circumstances, Counsel submitted, the provisions of section 536(2) TCA 1997 provide that the taxpayer has a year from receipt of the monies to apply the said monies for the replacement of the asset. However, Counsel submitted that as no evidence was provided to the Commission in support of a claim under section 536(2) TCA 1997, then the Commission should find that no such claim exists.

84. Turning to the Appellant's submissions that the Respondent had erred in its calculations in not providing an acquisition cost of the asset disposed of, the Respondent submitted that no credible evidence was brought before the Commission to justify such an allowance. Furthermore, the Respondent submitted that as the Appellant had not paid

for the options granted nor provided any valuable consideration for same, then the Commission should refuse the Appellant's claim.

85. In conclusion, the Respondent submitted that the settlement monies received on foot of the Circuit Court proceedings are considered a disposal for the purposes of CGT pursuant to section 535 TCA 1997. As the monies were not applied to replace the asset lost, the Respondent submitted that relief under section 536 TCA 1997 is not available and as such the full consideration received, after the deduction of disposal expenses, is taxable. Furthermore, the Respondent submitted that as the Appellant did not pay money or monies worth for the acquisition of the options, then the Commission should refuse the Appellant's request to include a base cost on the disposal. In those circumstances, the Respondent requested the Commission to refuse the Appellant's appeal, find that it had correctly interpreted the legislation and uphold the figures on its notice of assessment, in full.

Material Facts

86. The Commissioner finds the following material facts:

    86.1. The Appellant entered into a two leases on 1st May 1997 for the rental of agricultural lands ("the leased lands").

    86.2. Those leases were for periods of ten and seven years and required the payment for the use of the leased lands in the form of yearly rental payments.

    86.3. The leases included an option to purchase the leased lands on expiration of the term of the leases for a total consideration of £91,000.

    86.4. The Appellant paid his rent for the first year of the lease and enjoyed the lease of the leased lands for that year uninterrupted.

    86.5. The Appellant did not pay the rent on the leased lands for the second year of occupation as the lessor refused to accept payments.

    86.6. The Appellant was forced off the leased lands in or around November 1998 and did not occupy those lands after that date.

    86.7. As such the Appellant did not complete the term of the leases nor make payment of the £91,000 required to purchase the leased lands.

86.8. No evidence was provided to the Commission to demonstrate that the Appellant incurred expenditure on capital items when he was in possession of the leased lands.

86.9. Upon the death of the lessors of the leased land, the Appellant instructed his solicitor to instigate Court proceedings seeking compensation for his loss of rights associated with the leases entered into on 1st May 1997.

86.10. Those proceedings were settled by agreement without the intervention of the Courts. The agreement stipulated that the Appellant was to receive 35% of the net sale proceeds of the leased land.

86.11. The Appellant received the sum of €134,375.40 on 24th July 2013 in respect of his deemed 35% share of the leased land.

86.12. Both the Appellant and the Respondent agree that the monies received by the Appellant are within the charge to CGT under section 535 TCA 1997.

86.13. No reliefs were claimed by the Appellant in respect of the settlement monies received by him under section 536 TCA 1997 or any other provisions of the TCA 1997.

Analysis

87. The central issue to be determined in this appeal is whether the Appellant is entitled to deduct, in the calculation of his CGT liability, an amount in respect of the options granted to him on the acquisition of the leases or at such later stage when he was displaced from the leased lands.

88. Section 552 TCA 1997 sets out the sums allowable as a deduction from the consideration in the computation of a capital gain. Subsection (1) of that section restricts those deductions to:

"*(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,*

(b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the

disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c) the incidental costs to the person of making the disposal."

89. The Commissioner notes from the Appellant's submissions that the only sum of money paid by the Appellant in relation to the leased lands was the rent payments for the first year of occupation of those lands, which he enjoyed. In particular, the Commissioner notes that the Appellant neither paid rent for the use of the lands without enjoying the use of the lands nor the sums specified under the options contained within the leases to acquire ownership of the lands. Furthermore, no evidence was presented to the Commission to demonstrate that the Appellant incurred any capital expenditure on the lands, such as the installation of fencing or such like during his occupation of the leased lands.

90. While the Appellant appears to accept this position in its submissions, in place he requests the Commissioner to place a value on the options or chose in action as he puts it. The Commissioner understands that the Appellant places reliance in this submission by virtue of the fact that he could have sold the chose in action to a third person for a sum of money and therefore the chose in action had a value associated with it.

91. The Appellant's submission ignores two fundamental points. Firstly, as the Appellant did not provide any consideration, in money or money's worth, then there is no base cost associated with the acquisition of the chose in action. Secondly, as there was no base cost on the acquisition of the chose in action, had this been sold to a third party CGT would have been payable on the full disposal consideration received on that sale. As such, the submission advanced by the Appellant appears to confuse the value of the asset in calculating its worth with the base cost of the asset for CGT purposes.

92. As there is nothing in section 552 TCA 1997 nor in any section of the TCA 1997, to support the Appellant's submission that he should be entitled to some "notional" base cost deduction in calculating his liability for CGT, it follows that the Commissioner is unable to consider that submission.

93. It therefore follows that the Appellant is liable to CGT on the full consideration received by him on 24th July 2013 in the sum of €134,375.40, less any deductions of a type provided under section 552 TCA 1997.

94. In this regard, the Commissioner had the benefit of examining the Respondent's calculations which form the basis of its assessment to CGT in the sum of €38,319. As that computation allows for the deduction of the Appellant's legal fees and other expenses of a type permitted under section 552 TCA 1997 together with the Appellant's annual personal CGT allowance, he finds that the figure computed in the Respondent's assessment is the correct calculation of the Appellant's CGT liability for the tax year 2013.

95. Given this position, the Commissioner is required to refuse the Appellant's appeal and find that the Notice of Assessment to CGT which issued on 21st March 2019 in the sum of €38,319 is upheld.

Determination

96. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is … on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

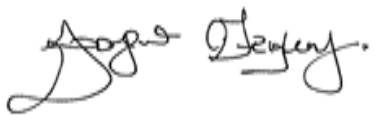
> "*The burden of proof in this appeal process is … on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

97. The Commissioner determines that the Appellant has not discharged the burden of proof in his appeal. Therefore, the Commissioner determines that the Appellant's appeal has failed and the Notice of Assessment which issued on 21st March 2019 in the sum of €38,319 stands.

98. It is understandable the Appellant will be disappointed with the outcome of this appeal. The Appellant was correct to check that his legal entitlements were correctly applied.

99. As noted at paragraph 37 above, the Appellant expressed his desire to exercise his right to state a case to the High Court under the provisions of section 941 TCA 1997. In order to assist the Appellant in this regard, the Commissioner has annexed at Appendix 1 a copy of the statutory provisions which govern this procedure.

100. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only to the High Court within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Andrew Feighery

Appeal Commissioner

11th September 2023

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

Appendix 1 – Legislation

Section 941 TCA 1997 - Statement of case for High Court.

(1) Immediately after the determination of an appeal by the Appeal Commissioners, the appellant or the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as "other officer"), if dissatisfied with the determination as being erroneous in point of law, may declare his or her dissatisfaction to the Appeal Commissioners who heard the appeal.

(2) The appellant or inspector or other officer, as the case may be, having declared his or her dissatisfaction, may within 21 days after the determination by notice in writing addressed to the Clerk to the Appeal Commissioners require the Appeal Commissioners to state and sign a case for the opinion of the High Court on the determination.

(3) The party requiring the case shall pay to the Clerk to the Appeal Commissioners a fee of €25 for and in respect of the case before that party is entitled to have the case stated.

(4) The case shall set forth the facts and the determination of the Appeal Commissioners, and the party requiring it shall transmit the case when stated and signed to the High Court within 7 days after receiving it.

(5) At or before the time when the party requiring the case transmits it to the High Court, that party shall send notice in writing of the fact that the case has been stated on that party's application, together with a copy of the case, to the other party.

(6) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.

(7) The High Court may cause the case to be sent back for amendment and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) An appeal shall lie from the decision of the High Court to the Supreme Court.

(9) If the amount of the assessment is altered by the order or judgment of the Supreme Court or the High Court, then—

(a) if too much tax has been paid, the amount over-paid shall be refunded with interest in accordance with section 865A, or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.

(a) if too much tax has been paid, the amount over-paid shall be refunded with interest in accordance with the provisions of section 865A, or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.

Section 945 TCA 1997 – Appeals against assessments.

(1) A person aggrieved by any assessment under the Capital Gains Tax Acts made on the person by the inspector or other officer mentioned in or other Revenue Officer mentioned in Part 41A shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer, and in default of notice of appeal by a person to whom notice of assessment has been given the assessment made on such person shall be final and conclusive.

(2) The provisions of the Income Tax Acts relating to—

(a) the appointment of times and places for the hearing of appeals,

(b) the giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal,

(c) the determination of an appeal by agreement between the appellant or the appellant's agent and an inspector of taxes or other officer mentioned in section 931(1),

(d) the determination of an appeal by the appellant giving notice of the appellant's intention not to proceed with the appeal,

(e) the hearing, determination or dismissal of an appeal by the Appeal Commissioners, including the hearing, determination or dismissal of an appeal by one Appeal Commissioner,

(ee) the publication of reports of determinations of the Appeal Commissioners,

(f) the assessment having the same force and effect as if it were an assessment in respect of which no notice of appeal had been given where the person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed,

(g) the extension of the time for giving notice of appeal and the readmission of appeals by the Appeal Commissioners and the provisions which apply where action by means of court proceedings has been taken,

(h) the rehearing of an appeal by a judge of the Circuit Court and the statement of a case for the opinion of the High Court on a point of law,

and

(j) the procedures for appeal,

shall, with any necessary modifications, apply to an appeal under any provision of the Capital Gains Tax Acts providing for an appeal to the Appeal Commissioners as if the appeal were an appeal against an assessment to income tax.

Section 949I TCA 1997 – Notice of Appeal.

(1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.

(2) A notice of appeal shall specify—

(a) the name and address of the appellant and, if relevant, of the person acting under the appellant's authority in relation to the appeal,

(b) in the case of an appellant who is an individual, his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) or, in the case of any other person, whichever of the numbers in respect of the person specified in paragraphs (b) and (c) of the definition of "tax reference number" in section 885(1) is appropriate,

(c) the appealable matter in respect of which the appeal is being made,

(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and

(e) any other matters that, for the time being, are stipulated by the Appeal Commissioners for the purposes of this subsection.

(3) Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied.

(4) Where an appeal is a late appeal, the notice of appeal shall state the reason the appellant was prevented from making the appeal within the period specified by the Acts for doing so.

(5) A copy of the notification that was received from the Revenue Commissioners (that is to say, the notification in respect of the matters the subject of the appeal) shall be appended to a notice of appeal.

(6) A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.

Section 949O TCA 1997 – Late Appeals

. (1) The Appeal Commissioners may accept a late appeal where—

(a) they are satisfied that—

(i) the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the period specified by the Acts for the making of that appeal, and

(ii) the appeal is made thereafter without unreasonable delay,

…

Section 959Z TCA 1997 – Right of Revenue Officer to make enquiries,

(1) A Revenue officer may, subject to this section, make such enquiries or take such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to—

(a) whether a person is chargeable to tax for a chargeable period,

(b) whether a person is a chargeable person as respects a chargeable period,

(c) the amount of income, profit or gains or, as the case may be, chargeable gains in relation to which a person is chargeable to tax for a chargeable period, or

(d) the entitlement of a person to any allowance, deduction, relief or tax credit for a chargeable period.

(2) The making of an assessment or the amendment of an assessment in accordance with subsection (2) of section 959Y by reference to any statement or particular referred to in paragraph (a) of that subsection does not preclude a Revenue officer from, subject to this section, making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular.

(3) Subject to subsection (4), any enquiries or actions to which either subsection (1) or (2) applies shall not be made in the case of a chargeable person for a chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period.

(4) Enquiries and actions to which either subsection (1) or (2) applies may be made at any time in relation to a person or a return for a chargeable period where—

(a) any of the circumstances referred to in paragraph (a), (b) or (c) of section 959AC (2) apply, or

(b) a Revenue officer has reasonable grounds for believing, in accordance with section 959AD (3), that any form of fraud or neglect has been committed by or on behalf of the person in connection with or in relation to tax due for the chargeable period.

…

Section 535 TCA 1997 – Disposals where capital sums derived from assets.

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

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

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

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

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

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

(b) Without prejudice to paragraph (a) (ii) but subject to paragraph (c), neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue, and in this paragraph "policy of insurance" does not include a policy of assurance on human life.

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

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

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

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

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

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

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

(2) Where an asset is lost or destroyed and a capital sum received as compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is, within one year of receipt or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

(a) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrued to such owner, and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under paragraph (a).

(3) A claim shall not be made under subsection (2) if part only of the capital sum is applied in acquiring the new asset; but, if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

(a) the amount of the gain so accruing were reduced to the amount of that part of the capital sum not applied in acquiring the new asset (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a).

(4) This section shall not apply in relation to a wasting asset.

Section 552 TCA 1997 – Acquisition, enhancement and disposal costs.

(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c) the incidental costs to the person of making the disposal.

(1A) (a) In this subsection "rate of exchange" means a rate at which 2 currencies might reasonably be expected to be exchanged for each other by persons dealing at arm's length.

(b) For the purposes of subsection (1) where a sum allowable as a deduction was incurred in a currency other than the currency of the State, it shall be expressed in terms of the currency of the State by reference to the rate of exchange of the currency of the State for the other currency at the time that the sum was incurred.

(1B) (a) In this subsection—

"connected person" has the same meaning as in section 10;

"debt" means a debt or debts, in respect of borrowed money, whether incurred by the person making the disposal of an asset or by a connected person;

"group" and "member of a group" have the same meanings, respectively, as in section 616.

(b) Where—

(i) the amount or value of the consideration referred to in subsection (1) (a), or

(ii) the amount of any expenditure referred to in subsection (1) (b),

was defrayed either directly or indirectly out of borrowed money, the debt in respect of which is released in whole or in part (whether before, on or after the disposal of the asset), that amount shall be reduced by the lesser of the amount of the debt which is released or the amount of the allowable loss which, but for this subsection, would arise.

(c) For the purposes of paragraph (b), the date on which the whole or part of a debt is released shall be determined on the same basis as the release of the whole or part of a specified debt is treated as having been effected in section 87B(4).

(d) Where a debt is released in whole or in part in a year of assessment after the year of assessment in which the disposal of the asset takes place (such that the release of the debt was not taken into account in the computation of a chargeable gain or allowable loss on the disposal of the asset) then for the purposes of the Capital Gains Tax Acts a chargeable gain, equal to the amount of the reduction that would have been made under paragraph (b) had the release been effected in the year of assessment in which the disposal of the asset took place, shall be deemed to accrue to the person who disposed of the asset on the date on which the debt is released but, where the disposal is to a connected person, any gain under this subsection shall be treated for the purposes of section 549(3) as if it accrued on the disposal of an asset to that connected person.

(e) A chargeable gain under paragraph (d) shall not be deemed to accrue where, had a gain accrued on the disposal of the asset, it would not have been a chargeable gain or it would have qualified for relief from capital gains tax.

(f) Where a debt released is in respect of money borrowed by a member of a group of companies from another member of the group, the amount or value of the consideration referred to in subsection (1)(a), or the amount of any expenditure referred to in subsection (1)(b), shall not be reduced by the amount of that debt which is released under paragraph (b) or a chargeable gain in

respect of the release of that debt shall not be deemed to accrue under paragraph (d).

(2) For the purposes of the Capital Gains Tax Act as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with—

(a) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

(3) (a) Where—

(i) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under subsection (1) in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

(ii) that expenditure was defrayed out of borrowed money,

(iii) the company charged to capital all or any part of the interest on that borrowed money referable to a period ending on or before the disposal, and

(iv) the company is chargeable to capital gains tax in respect of the gain,

then, the sums so allowable under subsection (1) shall include the amount of that interest charged to capital except in so far as such interest has been taken into account for the purposes of relief under the Income Tax Acts, or could have been so taken into account but for an insufficiency of income or profits or gains.

(b) Subject to paragraph (a), no payment of interest shall be allowable as a deduction under this section.

(4) Without prejudice to section 554, there shall be excluded from the sums allowable as a deduction under this section any premium or other payment made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

(5) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which the person became absolutely entitled as legatee or as against the trustees of settled property—

(a) any expenditure within subsection (2) incurred by the person in relation to the transfer of the asset to the person by the personal representatives or trustees, and

(b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction under this section.