



Between



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against an assessment to Capital Gains Tax (“CGT”) for 2015 which was raised by the Revenue Commissioners (hereinafter “the Respondent”) on 9th January 2020. The Appellant makes his appeal in accordance with the provisions of section 945 Taxes Consolidation Act 1997 (“TCA 1997”).
2. The oral hearing took place before the Commissioner on 17th October 2022. The Appellant was represented at the hearing by his agents and the Respondent was represented by Counsel.
3. The amount of tax at issue is €81,074.

Background

4. The Appellant and his spouse (“the Appellant”) held 7,000 shares in ADM Londis PLC which were disposed of when that company was acquired in June 2015 by BWG Group. The Appellant’s shares were valued at €296,450 and having been acquired at

a cost of €48,226 this gave rise to a CGT gain of €248,224 (“the gain on the share disposal”). The quantum and timing of this gain are not in dispute between the Appellant and the Respondent.

5. On 22nd December 2015, the Appellant entered into a contract for the disposal of a premises in Co. ██████ for a consideration of €125,000 (“the premises”). The Appellant had purchased the premises in 2002 for €500,000. A loss of circa €375,000 arose on this disposal and the Appellant offset this loss (“the premises’ loss”) against the gain on the share disposal. The quantum of this loss is not in dispute between the Appellant and the Respondent.
6. As the Appellant contended that the gain on the share disposal and the premises’ loss both arose in the tax year 2015, this resulted in no CGT being payable as the premises loss was offset against the gain on the share disposal.
7. On 7th March 2018, the Appellant’s 2015 Income Tax and CGT returns were selected for audit by the Respondent.
8. During the course of the audit, the Respondent formed the view that the premises’ loss did not occur in the calendar year 2015. The Respondent informed the Appellant that it was of the belief that the contract for the sale of the premises was a conditional contract. As the Respondent contended that the conditions within the contract were not satisfied until the earliest 2016, it advised the Appellant that the premises’ loss could not be offset against the gain on the share disposal as capital losses can only be offset against same or future year capital gains.
9. Correspondence ensued between the Appellant and the Respondent which cumulated in the Respondent issuing the Notice of Assessment to CGT in the sum of €81,074 on 9th January 2020.
10. The Appellant subsequently exercised their right to appeal that assessment and a notice of appeal was lodged with the Commission on 31st January 2020.

Legislation

11. *The legislation relevant to this appeal is as follows:*

Section 31 TCA 1997

Amount chargeable.

Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting—

(a) any allowable losses accruing to that person in that year of assessment, and

(b) in so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1974-75).

Section 542 TCA 1997

Time of disposal and acquisition.

(1) (a) Subject to paragraph (b) and subsection (2), for the purposes of the Capital Gains Tax Acts, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made shall be the time at which the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

(b) Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied.

...

(2) [Relates to the receipt of capital sums from compensation payments, etc. and as such, is not applicable to the Appellant's Disposal]

Section 546 TCA 1997

Allowable losses

(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no allowable loss shall accrue on its disposal.

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

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

of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly.

- (4) A loss accruing to a person in a year of assessment for which the person is neither resident nor ordinarily resident in the State shall not be an allowable loss for the purposes of the Capital Gains Tax Acts unless under section 29(3) the person would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.*
- (5) Except where provided by section 573, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Acts—*
- (a) more than once in respect of any loss or part of a loss, and*
- (b) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts.*
- (6) For the purposes of section 31,, where, on the assumption that there were no allowable losses to be deducted under that section, a person would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, any allowable losses to be deducted under that section shall be deducted—*
- (a) if the person would be so chargeable at 2 different rates, from the chargeable gains which would be so chargeable at the higher of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the lower of those rates, and*
- (b) if the person would be so chargeable at 3 or more rates, from the chargeable gains which would be so chargeable at the highest of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the next highest of those rates, and so on.*

Section 573 TCA 1997

Death

(1) In this section, references to assets of which a deceased person was competent to dispose are references to assets of the deceased which the deceased could if of full age and capacity have disposed of by will, assuming that all the assets were situated in the State and that the deceased was domiciled in the State, and include references to the deceased's severable share in any assets to which immediately before his or her death he or she was beneficially entitled as a joint tenant.

(2) For the purposes of the Capital Gains Tax Acts, the assets of which a deceased person was competent to dispose—

(a) shall be deemed to be acquired on his or her death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death; but

(b) shall not be deemed to be disposed of by him or her on his or her death (whether or not they were the subject of a testamentary disposition).

(3) Allowable losses sustained by an individual in the year of assessment in which he or she dies may, in so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year, and there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to this subsection.

(4) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence and domicile at the date of death.

(5) Where any asset is acquired by a person as legatee no chargeable gain shall accrue to the personal representatives, but the legatee shall be treated

as if the personal representatives' acquisition of the asset had been the legatee's acquisition of the asset.

(6) Where not more than 2 years, or such longer period as the Revenue Commissioners may by notice in writing allow, after a death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will or under the law relating to intestacies or otherwise, are varied by a deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of the Capital Gains Tax Acts.

Land and Conveyancing Law Reform Act 2009

Passing of beneficial interest

52. (1) Subject to subsection (2), the entire beneficial interest passes to the purchaser on the making, after the commencement of this Chapter, of an enforceable contract for the sale or other disposition of land.

(2) Subsection (1) does not affect—

(a) the obligation of the vendor to maintain the land so long as possession of it is retained, or

(b) the liability of the vendor for loss or damage under any contractual provision dealing with such risk, or

(c) the vendor's right to rescind the contract for failure by the purchaser to complete or other breach of the contract, or

(d) any provision to the contrary in the contract.

Submissions

Appellant

12. The Appellant's Agent advised that the contract for the sale of the premises ("the sales contract") was dated 22nd December 2015. The Appellant's agent submitted that this sales contract was unconditional and as such the disposal of the premises arose in the tax year 2015 and not 2016 as alleged by the Respondent.

13. The Appellant's agent submitted as the sales contract did not contain any "subject to" or other contingent conditions that this supported the position that the sales contract was unconditional.
14. The Appellant's agent sought to argue for a binary analysis of the sales contract, setting up the questions of whether:
 - (a) Special conditions 6 and 7 were preconditions to the sales contract (such that there is no contract – so called "conditions precedent"), or
 - (b) Special conditions 6 and 7 were preconditions to performance of contractual terms (such that there is a contract but unless conditions are met, the counterparty is not obliged to perform certain terms – so called "conditions subsequent").
15. The Appellant's agent submitted the sales contract falls under (b) above (i.e. it only contained "conditions subsequent"). The Appellant's agent submitted that section 542 (1) (b) TCA 1997 only contemplates a contract which falls under (a) above (conditions precedent) and as such was not relevant to the Appellant's disposal of the premises. The effect of this, if granted, would deem the sales contract unconditional and as such place the disposal as occurring within the 2015 tax year.
16. The Appellant's agent further submitted as the contract only allowed the purchaser and not the vendor the right to withdraw from the contract that this had the effect of binding the seller to the sale and this equated to an unconditional contract for the Appellant.
17. The Appellant's agent referred to section 52 (1) Land and Conveyancing Law Reform Act 2009 which states that the entire beneficial ownership passes to the purchaser on the making of an enforceable contract. The Appellant's Agent submitted that as the vendor could not withdraw from the sale with effect from the date of the sales contract (22nd December 2015) then this equated to an enforceable contract and as such this placed the disposal squarely in the 2015 tax year.
18. The Appellant's agent opened the United Kingdom (UK) case of *Parway Estates v Commissioners of Inland Revenue* 45 TC 135 ("Parway"). In *Parway*, which concerned assessment to stamp duty, the appellant company in that case agreed to sell to a third party the share capital of a wholly owned subsidiary which had accumulated losses qualifying for relief from income tax. The sale required the vendor of the shares to undertake certain contractual obligations before the contract was completed. The UK Court of Appeal ultimately held that the contract was unconditional as it was not a case

“where the performance of a contract depends on the vendors doing something which is beyond their powers to do.”

19. The Appellant’s agent likened the Appellant’s case to *Parway* in submitting although the sales contract required certain actions to be completed by the Appellant, these actions were within the Appellant’s powers and hence the Commission should similarly determine that the sales contract was unconditional.
20. The Appellant’s agent submitted if CGT was payable, which was denied, that the penalty imposed by the Respondent was disproportionate. The Appellant’s agent submitted that as the Appellant’s *“position was not free from doubt”* and was an area of technical complexity that the penalty imposed by the Respondent ought to be reduced to nil as a “technical adjustment”. The Commissioner notes that a “technical adjustment” permits the Respondent to apply a nil penalty in instances where a liability is crystallised arising from differences in interpretation of tax law. For a Revenue auditor to accept such a position, they would need to be satisfied that due care has been taken by the taxpayer and that the interpretation taken by the taxpayer was reasonable.
21. In summation, the Appellant’s agent submitted that the sales contract was unconditional as it only provided for conditions subsequent and as such the premises loss arose on the date the sales contract was entered into between the Appellant and the purchaser. As this date was in the tax year 2015, the Appellant’s agent submitted that the premises’ loss was available for offset against the gain on the share disposal, the effect of which was to reduce the 2015 CGT to nil. The Appellant’s agent submitted given this position, the Commission should vacate the Notice of Assessment in the sum of €81,074 raised by the Respondent.
22. Further or in the alternative, the Appellant’s agent submitted in the event of the assessment being upheld, that the Commission should direct that the penalty imposed by the Respondent be reduced to nil as a “technical adjustment”.

Respondent

23. The Respondent’s Counsel opened special conditions 6 and 7 of the contract which stated:

“6. The vendor and the purchaser agree and acknowledge that to the date of this agreement insufficient information and documentation have been provided to satisfy the purchaser in relation to title/planning/lease/other matters pertaining to the property in sale. In the event that the purchaser is not satisfied

in this regard by 30th June 2016 OR in the event that the purchaser decides at an earlier date that the seller is unwilling and/or unable to satisfy him in this regard the purchaser may elect to withdraw from the purchase envisaged by this agreement without interest, cost or penalty by so notifying the vendor and in such instance he shall have his booking and contract deposit returned to him in full.

7. The vendor shall use best endeavours to satisfy the purchaser in relation to such title/planning/lease/other matters pertaining to the property in sale to enable the purchaser's satisfaction with same. Without prejudice to the generality of this the vendor shall lodge an application for retention permission to cover all and any unauthorised usage of the property no later than the 15th January 2016 and shall progress and prosecute this application as quickly as possible.

In the event that the vendor is unwilling and/or unable to satisfy the purchaser in relation to such title/planning/lease/other matters pertaining to the property in sale to enable the purchaser's satisfaction with same prompting the buyer to withdraw, the vendor shall refund the purchaser his reasonable surveying and legal costs incurred in connection with the purchase transaction being no more than a maximum of €3,000 plus VAT."

24. The Respondent's Counsel submitted that the contract was very unusual as special conditions 6 and 7 vested an absolute, unfettered discretion to the purchaser to decide whether or not to complete, based on its satisfaction as to an open ended, undefined set of criteria, namely "*planning/lease/other matters*".
25. The Respondent's Counsel submitted that these clauses amounted to an option to purchase as the sale and purchase was wholly unenforceable by the vendor unless and until the purchaser decided that it was satisfied to complete.
26. The Respondent's Counsel opened the case of *Hand v Greaney* [2004] IEHC 391 ("*Hand*") at page 9, in which the then Mr Justice Clarke held that a clause which fixed the determination of whether a planning permission was satisfactory to the absolute discretion of a purchaser as "*more resembles an option to purchase*" given its wide discretion. The Respondent's Counsel noted that the discretion afforded to the Appellant's purchaser was even "*more striking*" as the purchaser had an absolute, open ended-discretion whether or not to bind itself to complete and suffered no adverse consequence if it did not.

27. The Respondent's Counsel further opened the case of *O'Connor v Coady* [2004] 3 IR 271 in which it submitted it was held that a conditional contract is not only one which does not come into existence if a condition is not satisfied but also one which contains conditions which must be satisfied before the counterparty is bound to perform certain terms.
28. The Respondent's Counsel submitted that as the contract for sale could not be enforced without the purchaser's licence or assent, to be granted or not granted, entirely at the purchaser's discretion, there was no clearer definition of an option to buy. Given this option, Counsel submitted that she was at a loss to understand how the transaction fell outside the provisions of section 542 (1) (b) TCA 1997 when that provision clearly refers to an option.
29. The Respondent's Counsel stated that while the sales contract was dated 22nd December 2015 with an agreed closing date of 30th June 2016, the sale did not actually close until April 2017. Counsel submitted that as the sales contract did not complete on the proposed closing date some six months after the sales contract was signed, and in fact did not close until some sixteen months after it was signed, that this was further evidence that the contract was conditional.
30. In summation, the Respondent's Counsel submitted as the contract contained an option and/or conditional clauses, it was subject to the provisions of section 542 (b) TCA 1997. As this provision states that "*the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied*", Counsel submitted that as the conditions were not satisfied until the earliest 2016, then the Appellant could not offset the premises loss against the gain on the disposal of shares which had occurred in the 2015 tax year. As such, the Respondent's Counsel requested that the Commission uphold the assessment in the sum of €81,074.

Documentation and Evidence Matters Presented to the Commission

31. The following documentation was presented to the Commission:
- 31.1 The contract for sale of the property ("the subject property") which is dated 22nd December 2015 and signed by the Appellant and the purchaser.
- 31.2 A folio extract from the Land Registry showing the leasehold interest on the subject property being granted to the Appellant for a period of 999 years from 1st January 2001. This extract refers to a deed of variation dated 18th December 2016 made between [REDACTED] on the one part and the Appellant on the other part. While that folio is undated, it shows at page 3 an entry as follows:

“3-Oct-2007 [REDACTED] of [REDACTED] is full owner.”

31.3 A copy of a stamp duty return referring to a Deed of Rectification (not on a sale or a gift). This document shows the subject property being transferred from [REDACTED] to the Appellant with an effective date of 18th December 2016. The document shows the date filed as 27th March 2017 and the date of execution of instrument as 18th December 2016.

31.4 A letter from a consulting engineer to [REDACTED] County Council dated 14th March 2017. This letter purports to relate to the subject property and states:

“... ”

The final item of planning compliance is submitted below.

Item 10

A section 16 Effluent Discharge licence under the local government act (Water Pollution) Act 1977, as amended shall be obtained from [REDACTED] Co. Co.

- Please see attached Discharge licence for the property granted by Irish Water. Licence Number [REDACTED]

If there are any queries relating to this planning compliance, please do not hesitate to contact the undersigned.

Yours etc.”

31.5 A statement of account from the Appellant’s solicitors showing the receipt and disbursement of the sale proceeds on 6th April 2017. The following entries are shown on that statement:

Statement of Account			
Payments		Receipts	
	€		€
██████ Solicitors <i>(Costs, VAT & Outlays)</i>	37,537	Deposit received re sale	12,500
Sum held back pending registration	5,000	Balance sale proceeds	93,010
Transfer to clients	20,000	Transfer received from clients <i>(Re: Contribution towards purchaser's fees - 11/11/2016)</i>	3,690
██████ <i>(Re: xx/lease security deposit)</i>	1,050	Transfer received from clients <i>(Re: Stamp Duty - 3/3/2017)</i>	115
Balance due to clients	45,728		
	<u>109,315</u>		<u>109,315</u>
<i>Dated this 6th day of April 2017</i>			
<i>Signed: (Solicitor name and address)</i>			

- 31.6 No documentation or evidence was presented to the Commission that the subject property was held in trust or under any other arrangement by ██████ on behalf of the Appellant.
- 31.7 During the course of the hearing, the Appellant advised the Commissioner that the subject property had planning in place to operate as a post office and convenience store. The Appellant advised that while the post office remained in situ the convenience store was replaced by a restaurant and for the sale to be effective, retention planning permission was required for the change of use.

Material Facts

32. The Commissioner finds the following material facts:-

- 32.1 The Appellant made a gain on a share disposal in 2015.
- 32.2 On 22nd December 2015, the Appellant entered into a contract for the disposal of a premises ("the sales contract"). This disposal gave rise to a capital loss of €375,000.
- 32.3 The Appellant seeks to offset this capital loss against the gain on the share disposal.
- 32.4 A dispute had arisen as to whether the premises loss was incurred in 2015.
- 32.5 The Appellant was bound by the terms of the sales contract.
- 32.6 Wide discretion was afforded to the purchaser as to whether it wished to fulfil its obligations under the sales contract.

- 32.7 The contract was not concluded until April 2017.
- 32.8 The Commission were provided with a Land Registry Folio in respect of the subject property. This folio shows that [REDACTED] was the full owner of the subject property as at 3rd October 2007.
- 32.9 The subject property was not transferred into the Appellant's name until 18th December 2016.
- 32.10 The subject property was not held in trust.
- 32.11 Planning compliance on the subject property was not obtained until the earliest of 14th March 2017.
- 32.12 The statement of account from the Appellant's solicitor shows gross sale proceeds of €105,510, a transfer of €3,690 received from the Appellant's solicitor and described as "contribution towards purchaser's fees 11/11/2006" and a payment to the Appellant's solicitor of €37,537 described as "fees and outlays".

Analysis

33. The sole issue in dispute between the Appellant and the Respondent is whether the loss incurred by the Appellant on the disposal of the subject premises arose in the 2015 tax year or a later year of assessment. While the provisions of section 542 (1) (a) TCA 1997 provide that the relevant date for the disposal of an asset is the date that the contract is made and not the date that the asset is transferred subsection 1 (b) of that section provides:

"Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied."

34. Accordingly, the central issue to be determined by the Commissioner is whether the sales contract on the premises disposal was conditional. While, the Appellant's agent requested that the Commissioner review the contract for the premises disposal on a binary basis, the Commissioner finds this mode of adjudication unsuitable for the matter under appeal for the reasons specified below.
35. The Appellant's agent submitted as the Appellant was bound by the terms off the contract, or as he put it, "*held over a barre*", that this equated to an unconditional contract. However, in examining the wording of section 542 (1) (b) TCA 1997, the

Commissioner finds that there is no statutory basis to support the Appellant's agent's proposition that as one party is bound by the terms of a contract that this equates to a contract being unconditional.

36. Such a unilateral view discounts that while one party may be bound by the terms of a contract, the other party, in this instance the purchaser may not. As section 542 (b) TCA 1997 refers to a contract which is conditional on the exercise of **an** option, rather than specifying a unilateral option, it therefore follows that the relevant date for a disposal to occur which is subject to an option, is the date on which that option is exercised.

37. In considering whether the premises' disposal was subject to an option, the Commissioner notes the latitude extended to the purchaser under clauses 6 and 7 of the contract which appeared unusual to him, such was the breadth and diversity of that latitude. In examining the evidence submitted to the Commission, it became clear to the Commissioner as to why the contract was drafted in the manner which it was. These include:

- On the date the contract was entered into between the Appellant and the purchaser, the subject premises were not held in the Appellant's name but rather that of a third party (the subject premises not being put into the Appellant's name until 18th December 2016).
- The sale was subject to retention planning permission and this permission was not obtained until the earliest of 14th March 2017 (with the contract concluding shortly, thereafter).
- For reasons unknown, the Appellant advanced monies to his solicitor to fund the payment of the purchaser's legal fees.
- In noting that the sale proceeds received (€105,510) were less than that envisaged under the sales contract, €125,000 and that significant expenditure was incurred by the Appellant's solicitor in fees and outlays (€37,537) in order to complete the sale. The quantum of fees and outlays expended in comparison to the sales proceeds ultimately received suggests to the Commissioner that considerable time and effort was spent in concluding the contract to the satisfaction of the purchaser. It is also evident that completion of the contract was problematic given the position that the Appellant discharged or contributed towards the purchaser's legal fees and ultimately received less consideration than that specified under the sales contract.

- In noting that the contract took considerable time to conclude being some 16 months after the date the contract was entered into between the Appellant and the purchaser.

38. Leaving aside the position that the contract was invalid on the date it was entered into, 22nd December 2015, by virtue of the Appellant not being the legal owner of the property at that point in time, regard must be had to the jurisprudence in *Hand*. Counsel for the Respondent submitted that as the contract for sale could not be enforced without the purchaser's licence or assent, to be granted or not granted, entirely at the purchaser's discretion, there was no clearer definition of an option to buy. The Commissioner agrees with this proposition and while the contract does not refer to an option, it is difficult to describe the latitude afforded to the purchaser as anything but an option. In coupling the facts outlined in paragraph 37 of this determination and having regard to the effective option granted to the purchaser, the Commissioner determines that the contract for the premises sale, if valid, was conditional on the exercise of an option.

39. The Commissioner notes the Appellant's submissions regarding *Parway* but distinguishes the facts in that case from the instant appeal on the grounds that the purchaser, rather than the Appellant in the within appeal had the power over the exercise of the option.

40. As section 542 (b) TCA 1997 states that the relevant date of a disposal subject to the exercise of an option is the date on which the option is exercised, the Commissioner determines that the date of the disposal of the premises the date on which the option was exercised. As the final "condition" (the granting of the retention planning permission) was fulfilled in 2017, the Commissioner determines that the premises disposal occurred in that tax year and not 2015 as alleged by the Appellant.

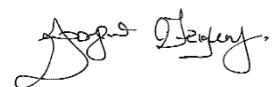
41. Section 31 TCA 1997 only permits capital losses incurred in the same or unused capital losses from previous years of assessment (the exception being section 573 (3) TCA 1997 which permits the carry-back of losses arising on death against the previous three years of assessment) to be offset against capital gains incurred in the same year of assessment. As the premises disposal occurred in 2017, it may not be offset against the gain on the share disposal which occurred in 2015. Therefore, the appeal is denied and the assessment is upheld.

42. During the hearing, the Appellant's agent requested that the Commission direct that the penalty imposed by the Respondent be reduced to nil as a "technical adjustment".

43. The jurisdiction of the Commission was considered by the Court of Appeal in the recent seminal case of *Lee v Revenue Commissioners* [2021] IECA 18 (“Lee”). In *Lee*, it was held the Commission’s functions are limited to those expressly conferred by the TCA 1997.
44. Those functions are substantially set out in the provisions of section 940 to 949 TCA 1997 and do not include the right to adjudicate upon the quantum of penalty imposed by the Respondent. Given this lack of jurisdiction, the Commissioner is prohibited from addressing the Appellant’s submissions regarding the penalty save to advise that the appropriate jurisdiction is the High Court who have carriage of such matters.

Determination

45. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in treating the premises’ disposal as not occurring in the 2015 tax year. Accordingly, the CGT assessment in the sum of €81,074 for the year 2015 is upheld and the appeal is denied. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied
46. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
16th November 2022

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