AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

194TACD2025

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant"), against an amended assessment to capital gains tax ("CGT") raised by the Revenue Commissioners ("the Respondent") for the year ended 31 December 2023. The amount of tax at issue is €52,946.00.

2. The Appellant's wife, with whom the Appellant is jointly assessed, disposed of land in 2023, which led to a chargeable gain and an assessment to CGT in the amount of €79,460. The Appellant sought to claim negligible loss relief pursuant to section 538(2) of the Taxes Consolidation Act 1997 as amended ("TCA 1997"). His claim was refused by the Respondent, on the basis that shares held by him in Allied Irish Banks plc ("AIB") and Irish Life and Permanent plc ("IL&P")[1] were not of negligible value.

[1] The company is now called Permanent TSB Group Holdings plc, but for convenience is referred to as IL&P throughout this Determination.

Background

3. On 23 January 2024, the Appellant's wife filed a CGT return for 2023 which showed a chargeable gain of [redacted] in respect of a disposal of land. In February 2024, the Appellant's daughter wrote to the Respondent on behalf of her parents, requesting that it grant relief pursuant to section 538(2) in respect of AIB and IL&P shares. On 5 March 2024, the Respondent refused the claim on the basis that section 538(2) was "*not intended to be a provision for making losses available on an artificial basis in circumstances where there would be no impediment to an actual disposal of the shareholding*."

4. On 28 April 2024, the Appellant completed a Form 11 income tax return for 2023, which claimed *inter alia* negligible loss relief. On 11 July 2024, the Respondent issued an amended assessment to CGT, which effectively disallowed the claim for relief. On 23 July 2024, the Appellant appealed against the amended assessment to the Commission.

5. The appeal proceeded by way of a hearing in private on 29 April 2025. The Appellant was represented by his tax agent. The Respondent was represented by counsel.

Legislation and Guidelines

6. Section 28(1) of the TCA 1997 states that

> "*Capital gains tax shall be charged in accordance with the Capital Gains Tax Acts in respect of capital gains, that is, in respect of chargeable gains computed in accordance with those Acts and accruing to a person on the disposal of assets."*

7. Section 532 of the TCA 1997 states *inter alia* that

> "*All forms of property shall be assets for the purposes of the Capital Gains Tax Acts whether situated in the State or not, including – (a) options, debts, and incorporeal property generally…*"

8. Section 538 of the TCA 1997 states *inter alia* that

> "*(1) Subject to the Capital Gains Tax Acts and in particular to section 540, the occasion of the entire loss, destruction, dissipation or extinction of an asset shall for the purposes of those Acts constitute a disposal of the asset whether or not any capital sum as compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.*
>
> *(2) Where on a claim by the owner of an asset the inspector is satisfied that the value of an asset has become negligible, the inspector may allow the claim, and thereupon*

the Capital Gains Tax Acts shall apply as if the claimant had sold and immediately reacquired the asset for a consideration of an amount equal to the value specified in the claim."

9. Section 548 of the TCA 1997 states *inter alia* that

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

[…]

(3)(a) The market value of shares or securities quoted on a stock exchange in the State or in the United Kingdom shall, except where in consequence of special circumstances the prices quoted are by themselves not a proper measure of market value, be as follows –

(i) in relation to shares or securities listed in the Stock Exchange Official List – Irish –

(I) the price shown in that list at which bargains in the shares or securities were last recorded (the previous price)…"

Case Law on Statutory Interpretation

10. In *Bookfinders Ltd v Revenue Commissioners* [2020] IESC 60 ("*Bookfinders*"), O'Donnell J stated *inter alia* that

"*47 However, that should not be understood to mean that the interpretation of tax statutes cannot have regard to the purpose of the provision in particular, or that the manner in which the court must approach a taxation statute is to look solely at the words, with or without the aid of a dictionary, and on the basis of that conclude that, if another meaning is capable of being wrenched from the words taken alone, the provision must be treated as ambiguous, and the taxpayer given the benefit of the more beneficial reading. Such an approach can only greatly enhance the prospects of an interpretation which defeats the statutory objective, which is, generally speaking, the antithesis of statutory interpretation.*

[…]

56 I would merely add that the principle of strict construction is, like many other principles of statutory interpretation, a principle derived from the presumed intention of the legislature, which is not to be assumed to seek to impose a penalty other than by

clear language. That approach should sit comfortably with other presumptions as to legislative behaviour, such as the presumption that legislation is presumed to have some object in view which it is sought to achieve. A literal approach should not descend into an obdurate resistance to the statutory object, disguised as adherence to grammatical precision."

11. In *Perrigo Pharma International Designated Activity Company v McNamara* [2020] IEHC 552 ("*Perrigo*"), McDonald J summarised the principles arising from the case law on statutory interpretation. At paragraph 74 he stated that

'*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise

is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible".*'

12. In *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43 ("*Heather Hill*"), the Supreme Court reiterated that the words of the statute should be given their ordinary and natural meaning, while being viewed in context. Murray J stated *inter alia* that

> "*106 … The judgment of McKechnie J. in [Brown; Minister for Justice v Vilkas [2018] IESC 69] provides a good summary that is reflected in the other decisions: indeed, it was cited at some length and relied upon in the course of the judgment of the Court of Appeal in this case. The essential points he made were as follows:*
>
> > *(i) The first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning (at paras. 92 and 93).*
> >
> > *(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include 'the immediate context of the sentence within which the words are used; the other subsections*

of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including … LRC or other reports; and perhaps … the mischief which the Act sought to remedy' (at para. 94).

(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language (see para. 92).

(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted (at para. 95).

[…]

112 … The debate reveals an obvious danger in broadening the approach to the interpretation of legislation in the way suggested by the more recent cases — that the line between the permissible admission of 'context' and identification of 'purpose', and the impermissible imposition on legislation of an outcome that appears reasonable or sensible to an individual judge or which aligns with his or her instinct as to what the legislators would have said had they considered the problem at hand, becomes blurred. In seeking to maintain the clarity of the distinction, there are four basic propositions that must be borne in mind.

113 First, 'legislative intent' as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in Crilly v. Farrington [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably attributed to a collective assembly whose members may act with differing intentions and objects.

114 Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see DPP v. Flanagan [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring

about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in McGrath v. McDermott [1988] IR 258, at p. 276).

115 Third, and to that end, the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

116 Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However — and in resolving this appeal this is the key and critical point — the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

13. Finally, the Court of Appeal in *Hanrahan v Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*") reaffirmed the principles enunciated in *Heather Hill*. In considering provisions of the TCA 1997 concerning CGT, the court stated that

"*140 How then to discern the purpose of s. 31? The purpose of the section must come from the plain and ordinary meaning of the words as they are seen in context within the taxation provisions. Section 31 however does not operate in isolation from the other provisions relevant to CGT and which address what losses are allowable and what are not allowed. Section 31 comes within Part 2 of the TCA dealing with The Charge to Tax, and Chapter 4 of that Part which deals specifically with Capital Gains Tax. Section 28 provides for the taxation of capital gains and the rate of charge. Section 31 provides*

that the tax shall be charged on the total amount of chargeable gains in the year of assessment after deducting any allowable losses accruing to that person in the year of assessment.

[…]

144 We have no doubt that the purpose of s. 31 must be viewed in the context of the overall provisions of the Act which includes general provisions providing for the computing of chargeable gains and allowable losses. That is a standard canon of statutory interpretation. It is not appropriate, therefore, to say that a court is limited only to the words within the section when ascertaining its purpose. The section exists within the TCA and its provisions must be interpreted accordingly. The other provisions in TCA provide for losses which are allowable. It also must be viewed in the context of the deeming provisions which are clearly purposed to prevent manipulation of the CGT provisions by overvaluing losses or undervaluing gains…"

Evidence

[redacted] *– Daughter of the Appellant*

14. The witness gave evidence on behalf of the Appellant. She stated that her father acquired a total of 20,747 shares in AIB between [redacted]. She stated that the shares were acquired at various prices, ranging from €2.03 to €12.67 over the acquisition period. [redacted]. She calculated the total cost of the shares at just over €89,000. She stated that the average share price was €4.31. The Appellant also acquired 1500 AIB shares in [redacted] at a cost of €21,570.

15. In 2015, the AIB shares were consolidated so that 1 new share was issued for every 250 old shares. This led to the Appellant having a new shareholding of 83 shares in respect of the [redacted] shareholding, and 6 shares in respect of the shareholding acquired in [redacted]

16. The Appellant also purchased shares in IL&P in [redacted] and [redacted] In [redacted], he purchased 1500 shares at a cost of €20,625, with each share costing approximately €14. In [redacted], he purchased a further 1500 shares at a cost of €5,049, with each share costing approximately €4. In 2015, IL&P shares were consolidated at a ratio of 100:1. This led to the Appellant holding 15 shares from the [redacted] acquisition, and a further 15 shares from the [redacted] acquisition (i.e. a total of 30 shares).

17. On cross examination, it was pointed out to the witness that the Respondent accepted the claimed acquisition costs for the [redacted] and [redacted] shareholdings, but that it did not

accept that sufficient documentation had been provided to substantiate the claimed acquisition costs for the [redacted] AIB shares.

18. The witness stated that the total outlay on the shares was €136,664. The IL&P shares had a value in 2023 of €25 and the AIB shares had a value of about €225, which she claimed was negligible.

Submissions

Appellant

19. In written submissions, the Appellant's agent stated that the facts of the case were simple and uncontroversial. It was clear from section 532 of the TCA 1997 that "assets" included quoted shares. There was nothing in section 538 to suggest that quoted shares were excluded from its application, as suggested by the Respondent. HMRC's guidance in the United Kingdom provided that negligible loss claims could be made in respect of quoted shares.

20. It was submitted that the shares held by the Appellant were of negligible value to him: "*As stated above, the value of the AIB shares, which cost €110,990, fell to €444 (loss of €110,546). The PTSB shares fell from a cost of €20,625 to €206 (loss of €20,419). The amounts of €444 and €206 would be further reduced by the costs of disposal under s555(2) TCA. By 2023, the €444 had reduced further to €350, and the €206 to €50 (both amounts before costs of disposal).*"

21. In oral submissions, the Appellant's agent stated that section 538(2) applied to an asset which remains in existence but the value of which has become negligible. The Respondent's guidance note discussed the value of shares decreasing from €10 million to €100,000, but the value of the shares herein had decreased much more than that. The Respondent had contended that the Appellant's losses were artificial, but he had lost a vast amount of money on the shares.

22. The value of the AIB shares in 2023 after (hypothetical) disposal was around €225, and the value of the IL&P shares after (hypothetical) disposal was about €25. In the context of share dealing, it was clear that these values were negligible. You could not look at value in an absolute sense, you had to look at it relative to the original purchase price. When determining whether or not the value was negligible, it was up to the Commissioner to apply his own experience and common sense; *Inspector of Taxes v Kiernan* [1981] IR 117.

23. It was clear from the case law on statutory interpretation that the plain, natural meaning of words of general use prevailed. The word 'negligible' was in common use and it was submitted that the natural meaning of the word demonstrated that the Appellant's shares were of negligible value.

24. The Respondent sought to rely on *Barker v Revenue and Customs Commissioners* [2012] SFTD 244 ("*Barker*"), but that was a case that was fundamentally about the valuation of shares in a private company. The First-Tier Tribunal found on the evidence that there was no market for those shares. It was notable that counsel for the respondent in that case suggested that "*a value of even £1,000 would not be negligible*." The value in this appeal was a fraction of that very low number.

25. In response to the Respondent's submissions, the Appellant's agent stated that the CGT Acts provided that disposal costs are deductible. The Appellant had previously held shares in Anglo Irish Bank ("Anglo"), and the Respondent had allowed negligible loss relief in respect of those shares.

Respondent

26. In written submissions, the Respondent stated that the Appellant's shares had not become of negligible value. They were traded on the open market and therefore had a value.

27. Section 538 of the TCA 1997 distinguished between assets that were lost or destroyed and those that became of negligible value. Subsection (1) made provision for a deemed disposal for CGT purposes where an asset had been destroyed or extinguished and effectively rendered incapable of disposal. Subsection (2) permitted the owner of an asset to make a claim to an inspector for the allowance of a loss on an asset the value of which had become negligible even though the asset remained in existence.

28. There was a clear distinction contemplated by the legislation between the treatment of a lost or destroyed asset which no longer existed and an asset which had become of negligible value but remained in existence. In respect of the latter, all that had changed was the value of the asset.

29. Section 538 had not featured in written deliberations of the Appeal Commissioners. However, the equivalent provision in the UK, section 24 of the Taxation of Chargeable Gains Act 1992, had been the subject of consideration by the First-Tier Tribunal ("FTT"). The most relevant FTT decision for this appeal was that in *Barker*. The FTT held that if

an asset had a market value its value could not be said to be “negligible”. It followed that the test of eligibility for relief under the section was whether the asset had a market value.

30. The FTT in *Barker* found that there was in effect no market for the shareholding in that appeal, and therefore the shares were of negligible value. That was to be contrasted with this appeal, where there was a readily available market for the AIB and IL&P shares. It was clear that section 538(2) was not intended to apply to a situation where an asset was firstly, still in existence and secondly, disposable on a readily available market thereby making losses available on an actual basis.

31. The statutory scheme allowed the Appellant to crystalise his actual losses on the disposal of his shares in the ordinary manner. Section 538 was to be read as a whole and in tandem with the relevant provisions of the CGT Acts, as *Bookfinders, Heather Hill* and *Hanrahan* required the Commissioner to do.

32. In oral submissions, counsel stated that the Respondent broadly accepted the value of the shares in 2023 as contended for by the Appellant, but did not accept that he was entitled to deduct disposal costs from the valuation for the purposes of section 538. This was particularly the case where the section provided for a deemed disposal.

33. It was not accepted that the Appellant had proven the cost of acquisition of his AIB shares from [redacted], but if the Commissioner agreed with the Appellant in principle, the question of the acquisition cost could be dealt with subsequently in correspondence.

34. It was not the Respondent’s case that quoted shares were not capable of being considered for the purposes of section 538(2). However, what the Appellant was seeking to do was to use that provision to effectively backdate his claim in order to put it against his chargeable gain in 2023. It had been open to him to sell his shares and crystalise his loss, but he had not done so. Instead, he was seeking to artificially manipulate the CGT Acts to create a loss to put against the disposal of land in 2023. This was what O’Donnell J had cautioned against in *Bookfinders* when he discussed “*An artificial interpretation of the words to produce an unrealistic reading of the Act.*”

35. Section 538(2) was a relieving provision and it was up to the Appellant to establish that he fell squarely within its provisions; *Revenue Commissioners v Doorley* [1933] IR 750. It was clear from the wording that the provision had to looked at in the context of the CGT Acts. It was clear from the case law on statutory interpretation that the words of a statute had to be looked at in context. There was no definition of “negligible value” but it was submitted that it was not comparative in nature. “Negligible” assumed something worthless that was not disposable anywhere else.

36. In response to the Appellant's agent's submissions regarding the Appellant's Anglo shares, counsel stated that after Anglo had been nationalised, the Respondent treated its shares as having negligible value. This was very different to the situation regarding AIB and IL&P shares, which continued to be traded on the open market.

Material Facts

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

    37.1. The Appellant purchased a total of 20,747 shares in AIB at various stages between [redacted]. The Appellant contended that they were acquired at a variety of prices ranging from €2.03 to €12.67, with an average price of €4.31. The Appellant contended that the total cost of the shares was just over €89,000.

    37.2. The Appellant also purchased an additional 1,500 shares in AIB in [redacted], at a cost of €21,570.

    37.3. In 2015, AIB shares were consolidated at a ratio of 250:1, so that the Appellant was left with a total of 89 shares. He calculated that the market value of those shares in 2023 was €350, and that consequently he had incurred a loss of over €110,000.

    37.4. The Appellant also purchased IL&P shares. In [redacted] he purchased 1,500 shares at a cost of €20,625. In [redacted] he purchased a further 1,500 shares at a cost of €5,049.

    37.5. In 2015, IL&P shares were consolidated at a ratio of 100:1, so that the Appellant was left with a total of 30 shares. He calculated that the market value of those shares in 2023 was €50, and that consequently he had incurred a loss of over €25,000.

    37.6. In 2023, the Appellant disposed of land. This resulted in a chargeable gain of [redacted] and an assessment to CGT in the amount of €79,460. The Appellant subsequently sought to rely on section 538(2) of the TCA 1997 to offset his deemed losses on the AIB and IL&P shares against his chargeable gain. The claim for relief was refused by the Respondent.

Analysis

38. The principal issue for determination herein is whether the Appellant was entitled to rely on the provisions of section 538(2) of the TCA 1997 in order to offset his deemed losses on shares against his chargeable gain on the disposal of land. This is a question of statutory interpretation. If the Commissioner agrees with the Appellant on this point, the question of the acquisition costs of his shares then will arise. At the hearing, the Respondent stated that it did not accept that the Appellant had proved the claimed acquisition cost of the AIB shares bought by him between [redacted]. However, it was agreed that this could be further explored by way of correspondence, if necessary. Consequently, the Commissioner will proceed on the basis of the costs and values of the Appellant's shares as set out on his behalf for the purposes of this determination.

39. As this appeal concerns a matter of statutory interpretation, it was agreed by both parties that there was no burden of proof on the Appellant. Rather, the position is as set out by the Court of Appeal in *Hanrahan*:

> "*98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation..."*

40. Section 538 of the TCA 1997 provides for deemed disposal where an asset is lost or entirely destroyed (subsection (1)), or where the value of the asset has become negligible (subsection (2)). "Negligible value" is not defined in the TCA 1997. The Appellant submitted that "negligible" was a word in common usage and that the Commissioner should apply his own experience and common sense to its interpretation.

41. The Respondent sought to rely on the FTT case of *Barker* in the UK. That case concerned section 24 of the Taxation of Chargeable Gains Act 1992, which is similar to section 538 of the TCA 1997. The FTT made the following observations on the definition of "negligible value":

> "*[7] It was common ground between the parties that 'negligible value' means 'worth next to nothing', but not 'nil', and that the concept has no room for any notion of*

materiality in which the previous value of the asset would be taken into account by way of comparison with the value which is said to be negligible. The test in that regard is therefore an absolute one, the same for an asset previously worth a million pounds and an asset previously worth much less…

[45] We accept the logic of the Crown's argument that s 24 should in principle be read as a whole, and that it is not appropriate to interpret each subsection independently unless there is a very clear indication that that is what Parliament intended. We see no such indication. It is in our view entirely reasonable to postulate that Parliament intended s 24 to deal with a group of very similar though not identical situations in which assets effectively cease to exist.

[46] Subsection (1) can only be read in that way. Subsection (2) deals with cases which are virtually identical to those in sub-s (1) but where the asset is still formally in existence, though as good as dead…

[47] In those circumstances, to speak of an asset which has become of negligible value as having a market value makes no sense. The very fact that it has no market value is why it is said to be of negligible value; if the asset has a market value, then its value cannot be negligible. That it may none the less have a subjective value to its owner is beside the point: an item of sentimental value to a person may well be nearly priceless as far as that person is concerned, but it would be quite unworkable for the tax base to depend on the accident of personal attachment to an asset rather than upon a value evidenced by an actual or hypothesised arm's length transaction.

[48] The test of eligibility for a claim under s 24(2) is therefore: does this asset have a market value? If the answer is no, a claim may in principle be made; if the answer is yes, no claim under this provision is appropriate. The draftsman had accordingly no need to specify whether the word 'value' in the phrase 'negligible value' meant 'market value'—or some other type of value—because the reference is to a situation in which there is no objective value. It was rightly accepted by both parties that 'negligible value' meant 'worth next to nothing'; and although it is at first sight odd for a claim for 'negligible' value to be set at nil, it is quite consistent with an approach to the issue which accepts that nil and negligible are so close as to make no difference."

42. The Commissioner considers the following guidance helpful from the above quotations: the UK equivalent of section 538(2) deals with cases where the asset is still formally in existence but as good as dead; the asset has effectively ceased to exist; "negligible value" means "worth next to nothing". The Commissioner considers that these concepts are in accordance with the definition of "negligible" in the Oxford English Dictionary as "*so small*

or insignificant as not to be worth considering"[2]. The Commissioner also agrees with the Respondent that whether or not an asset has negligible value is to be assessed on an objective rather than subjective basis, and the value of the asset is not to be assessed by comparison to its earlier value.

43. In interpreting section 538(2), the Commissioner is required to apply the principles of statutory interpretation outlined by the superior courts in *Bookfinders, Perrigo, Heather Hill* and *Hanrahan.* These can be summarised, very briefly, as 'the words in context'. The relevant context herein is the entirety of section 538 and the rest of the CGT Acts. As already stated, subsection (1) provides for situations where an asset is lost or entirely destroyed. The Commissioner considers that the concept of "negligible value" provided for in subsection (2) has to be understand in this context. It does not mean simply that an asset has lost most of its value; rather it means that, as per *Barker*, it has effectively ceased to exist.

44. The Commissioner considers that in order to determine this appeal, it is necessary to correctly identify the asset (or assets) in question. It seems to him that the Appellant has treated his total shareholding in AIB as an asset, and likewise his total shareholding in IL&P as an asset. This is understandable, as it is the value of the total aggregate shareholding that the Appellant has asserted is negligible. However, the Commissioner considers that this approach to section 538(2) is incorrect in law.

45. Shares are incorporeal property: "*A share in a company is, in effect, a bundle of proprietary rights which can be sold or exchanged for money or other valuable consideration*"; *Re Sugar Distributors Ltd* [1995] 2 IR 194. Therefore, pursuant to section 532 of the TCA 1997, each share is an asset[3]. Consequently, it is the value of <u>each share</u> held by the Appellant, and not his total aggregate shareholding, that must be considered in order to determine whether or not such value is negligible.

46. Based on the figures provided by the Appellant, which were not disputed by the Respondent, it appears that the value of each AIB share held by him in 2023 was approximately €3.93 (350/89) and the value of each IL&P share was approximately €1.67 (50/30). The Commissioner is satisfied that neither of these values could correctly be described as negligible, either by reference to the guidance provided in *Barker* (e.g. "*worth next to nothing*"), or by the common understanding of the word.

[2] https://www.oed.com/dictionary/negligible_adj?tab=meaning_and_use#35080031
[3] Paragraph 10.03 of *Irish Capital Gains Tax 2025* by Tom Maguire states that "*Each share contains particular rights and therefore each share is an asset in its own right*."

47. The value of AIB shares has increased since 2023, while the value of IL&P shares is roughly unchanged. The shares continue to be traded and could be sold by the Appellant at any time. Consequently, the Commissioner does not consider that the shares can be said to be "*as good as dead*", as stated in *Barker*. The Commissioner further notes that, at the time of writing, there are a number of companies on the Irish Stock Exchange with a share value lower than the IL&P value of €1.67.

48. It is undeniable that the Appellant has suffered a massive loss in value on his AIB and IL&P shares. For the purposes of this determination, the Commissioner accepts the Appellant's contention that he has incurred a loss of over €110,000 on his AIB shares, and a loss of over €25,000 on his IL&P shares. However, this comparative loss is not what is to be understood as constituting "negligible value".

49. Consequently, the Commissioner finds that the Appellant has not demonstrated that his shares had a negligible value in 2023 such as would allow him to rely on the provisions of section 538(2). Having said this, the Commissioner does not agree with the entirety of the Respondent's submission. The Respondent sought to rely on the statement in *Barker* that "*The very fact that it has no market value is why it is said to be of negligible value; if the asset has a market value, then its value cannot be negligible.*" The Respondent denied that it was asserting that all quoted shares were necessarily excluded from consideration under section 538(2), but this seems to the Commissioner to be the unavoidable logic of that aspect of the *Barker* decision. This is because section 548(3) of the TCA 1997 provides that the market value of publicly quoted shares shall be their share price.

50. However, section 538(2) refers simply to the value of "an asset" and does not provide for any exclusion for assets quoted on public share indices. The Commissioner considers that it would not be in accordance with the jurisprudence of the superior courts to "read in" such an exclusion, and therefore, insofar as the decision in *Barker* necessarily precludes the consideration of publicly quoted shares, the Commissioner is satisfied that this is not the law in this jurisdiction. The Commissioner considers that, in principle, it is possible that an owner of publicly quoted shares could qualify for relief under section 538(2). Each case must be considered on its own circumstances, but it would seem difficult to claim that a value, for the sake of argument, of one cent per share would not be negligible.

51. In conclusion, the Commissioner appreciates that this determination will be disappointing for the Appellant. However, he is obliged to interpret section 538(2) in accordance with the principles of statutory interpretation outlined by the superior courts. He is satisfied that

such interpretation requires that the value of each asset held by the Appellant be considered, rather than the aggregate value of his shareholding. He is further satisfied that neither the Appellant's AIB shares, nor his IL&P shares, have a negligible value. Therefore, the appeal is unsuccessful.

Determination

52. 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 determines that the amended assessment to CGT for 2023 stands.

53. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

54. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

55. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
12 June 2025