



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

201TACD2025

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against Notices of Amended Assessment to Capital Acquisitions Tax (hereinafter “CAT”) issued by the Revenue Commissioners (hereinafter the “Respondent”) on 25 April 2023 which showed an underpayment of CAT of €288,465 and imposed a surcharge for the late submission of return of €28,846. The balance payable on the Notice of Amended Assessment was €317,312.

Background

2. Mr [REDACTED] (hereinafter the “Appellant”) is a taxpayer.
3. On 25 April 2024, following an investigation, the Respondent issued the Notices of Amended Assessment to CAT to the Appellant, all of which the Appellant appealed to the Commission, which contained the following information:

Period ending	Amount of CAT Computed on Gift Receipt	Amount of CAT Underpayment Assessed	Surcharge imposed for late submission of return €
31 August 2006	189,837	189,837	0
31 August 2007	2,666	2,666	0
31 August 2008	2,666	2,666	0
31 August 2009	4,726	4,726	0
31 August 2010	4,726	4,726	472
31 August 2011	4,619	4,619	461
31 August 2012	4,964	4,964	496
31 August 2013	6,421	5,837	583
31 August 2014	6,043	6,043	604
31 August 2015	6,939	6,308	630

31 August 2016	6,600	6,600	660
31 August 2017	7,340	7,340	734
31 August 2018	8,235	288,465	28,846

4. The Notices of Amended Assessment were raised on the basis that the Appellant had, for the years ending 31 August 2006 to 31 August 2018 inclusive, received gifts and inheritances from his Aunt, Mrs [REDACTED]. Specifically, the Notices of Amended Assessment to CAT were raised on the basis that:
 - 4.1. The Appellant had received cash gifts from his Aunt;
 - 4.2. The Appellant had received gifts in the form of rent free accommodation from his Aunt; and
 - 4.3. The Appellant had inherited a house at [REDACTED] [REDACTED] (hereinafter the "House") together with its contents, from his Aunt.
5. The Notices of Amended Assessment to CAT also contained surcharges for the late filing of returns by the Appellant.
6. The Appellant's Aunt died on [REDACTED] 2017. As part of her Last Will and Testament, which was executed on [REDACTED] 2011, the Appellant was bequeathed the House together with its contents.
7. Prior to the Appellant's Aunt's death, the Appellant had been residing in the House since at least 2006.
8. On 26 June 2023, the Respondent submitted a Notice of Objection to this appeal. Following engagement between the parties and the Commission, on 17 October 2024 a Decision in relation to the acceptance of this appeal by Commissioner Leonora B. Doyle was issued to the parties which decided, *inter alia*, that:
 - 8.1. this appeal as it related to the periods ending 31 August 2006 to 31 August 2017 inclusive was refused;
 - 8.2. this appeal as it related to the period ending 31 August 2018 shall proceed.

9. No appeal of that Decision was pursued by the parties. A copy of the Decision of 17 October 2024 is annexed hereto at **Annex 1**.
10. This, then, is an appeal against the Notice of Amended Assessment to CAT raised by the Respondent on 25 April 2023 for the period ending 31 August 2018.
11. On 4 December 2024, following an application by the Appellant's Tax Agent, the Appellant was excused from attending at the oral hearing on the basis of his health.
12. The oral hearing of this appeal commenced on 6 February 2025. From the outset of the oral hearing, and in circumstances where the Appellant was not in attendance at the oral hearing, the Commissioner enquired from the Appellant's Tax Agent whether she was satisfied that she was fully instructed to proceed with the appeal. The Appellant's Tax Agent confirmed that she was.
13. On that date, shortly before the commencement of the oral hearing, the Respondent submitted additional documentation to the Commissioner and, at the opening of the oral hearing, the Respondent outlined that it was changing the basis of its case from that which had been outlined in the Outline of Arguments which it had previously submitted to the Commission. On that basis the Appellant's Tax Agent was given time to consider the Respondent's additional documents and the oral submissions which the Respondent had made and to take instructions from the Appellant. Following an adjournment of almost two hours, the oral hearing was further adjourned to allow the Appellant's Tax Agent consult with the Appellant and to take full instructions from the Appellant.
14. The oral hearing of this appeal took place on 10 March 2025. The Commissioner again enquired of the Appellant's Tax Agent whether, in circumstances where the Appellant was not in attendance at the oral hearing, she was satisfied that she was fully instructed to proceed with the appeal. The Appellant's Tax Agent confirmed that she was.

Legislation and Guidelines

15. The legislation relevant to this appeal is as follows:

Section 2 of the Capital Acquisitions Tax Consolidation Act 2003 (hereinafter the "CATCA 2003") entitled "General interpretation" in force from 21 March 2016 to 20 December 2021:

"(1) In this Act, unless the context otherwise requires –

"absolute interest", in relation to property, includes the interest of a person who has a general power of appointment over the property;

"accountable person" means a person who is accountable for the payment of tax by virtue of section 45;

"Appeal Commissioner" has the meaning given to it by section 2 of the Finance (Tax Appeals) Act 2015;

"benefit" includes any estate, interest, income or right;

"child" includes -

- (a) a stepchild;*
- (b) a child who is adopted under an adoption order within the meaning of section 3 (1) of the Adoption Act 2010 or the subject of an intercountry adoption effected outside the State and recognised under that Act;*

"child of the civil partner" in relation to an individual, means a child of the individual's civil partner who was born before the registration of their civil partnership or during their civil partnership;

"civil partner" means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

"civil partnership" means -

- (a) a civil partnership registration referred to in section 3(a) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 , or*
- (b) a legal relationship referred to in section 3(b) of that Act;*

"Collector" means the Collector-General appointed under section 851 of the Taxes Consolidation Act 1997;

"Commissioners" means the Revenue Commissioners;

"date of the disposition" means -

- (a) in the case of a will, the date of the testator's death,*
- (b) in the case of an intestacy or a partial intestacy, the date of death of the intestate,*
- (c) in the case of a benefit under Part IX or section 56 of the Succession Act 1965, the date of death of the relevant testator*

or other deceased person, and correspondingly in the case of an analogous benefit under the law of another territory,

- (d) in the case of a disposition which consists of the failure to exercise a right or a power, the date of the latest time when the disponent could have exercised the right or the power if that disponent were sui juris and not under any physical disability, and*
- (e) in any other case, the date on which the act (or where more than one act is involved, the last act) of the disponent was done by which that disponent provided or bound that disponent to provide the property comprised in the disposition;*

"date of the gift" means the date of the happening of the event on which the donee, or any person in right of the donee or on that donee's behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift;

"date of the inheritance" means -

- (a) in the case where the successor or any person in right of the successor or on that successor's behalf becomes entitled in possession to the benefit on the happening of any such event as is referred to in section 3(2), the date of the event,*
- (b) in the case of a gift which becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponent, the date which would have been the date of the gift if the entitlement were a gift, and*
- (c) in any other case, the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit,*

and a reference to the time when an inheritance is taken is construed as a reference to the date of the inheritance;

"decree of dissolution" means a decree under section 110 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

"discretionary trust" means any trust whereby, or by virtue or in consequence of which -

- (a) property is held on trust to accumulate the income or part of the income of the property, or*
- (b) property (other than property to which for the time being a person is beneficially entitled for an interest in possession) is held on trust to apply, or with a power to apply, the income or capital or part of the income or capital of the property for the benefit of any person or persons or of any one or more of a number or of a class of persons whether at the discretion of trustees or any other person and notwithstanding that there may be a power to accumulate all or any part of the income;*

"disponer", in relation to a disposition, means the person who, for the purpose of the disposition, directly or indirectly provided the property comprised in the disposition, and in any case where more than one person provided the property each is deemed to be the disponer to the extent that that disponer so provided the property; and for the purposes of this definition -

- (a) the testator is the disponer in the case of a disposition referred to in paragraph (k) of the definition of "disposition",*
- (b) the intestate is the disponer in the case of a disposition referred to in paragraph (l) of that definition,*
- (c) the deceased person referred to in paragraph (m) of that definition is the disponer in the case of a disposition referred to in that paragraph, and*
- (d) a person who has made with any other person a reciprocal arrangement by which that other person provided property comprised in the disposition is deemed to have provided that property;*

"disposition" includes -

- (a) any act or omission by a person as a result of which the value of that person's estate immediately after the act or omission is less than it would be but for the act or omission,*

- (b) *any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations,*
- (c) *the creation of a debt or other right enforceable against the disponent personally or against any estate or interest that disponent may have in property,*
- (d) *the payment of money,*
- (e) *the allotment of shares in a company,*
- (f) *the grant or the creation of any benefit,*
- (g) *the grant or the creation of any lease, mortgage, charge, licence, option, power, partnership or joint tenancy or other estate or interest in or over any property,*
- (h) *the release, forfeiture, surrender or abandonment of any debt or benefit, or the failure to exercise a right, and, for the purpose of this paragraph, a debt or benefit is deemed to have been released when it has become unenforceable by action through lapse of time (except to the extent that it is recovered subsequent to its becoming so unenforceable),*
- (i) *the exercise of a general power of appointment in favour of any person other than the holder of the power,*
- (j) *a donatio mortis causa,*
- (k) *a will or other testamentary disposition,*
- (l) *an intestacy, whether total or partial,*
- (m) *the payment of a share as a legal right under Part IX of the Succession Act 1965, to a deceased person's spouse or civil partner, or the making of provision for a widow, surviving civil partner or child of a deceased person under section 56 or section 117 of the Succession Act 1965, or an analogous share or provision paid or made on the death of a deceased person to or for the benefit of any person under the law of another territory, and*
- (n) *a resolution passed by a company which is deemed by subsection (3) to be a disposition;*

"donee" means a person who takes a gift;

"entitled in possession" means having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing a person is also, for the purposes of this Act, deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person, in which that person is a partner, joint tenant or beneficiary, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy;

"general power of appointment" includes every power, right, or authority whether exercisable only by will or otherwise which would enable the holder of such power, right, or authority to appoint or dispose of property to whoever the holder thinks fit or to obtain such power, right or authority, but exclusive of any power exercisable solely in a fiduciary capacity under a disposition not made by the holder, or as mortgagee;

"gift" means a gift which a person is by this Act deemed to take;

"the Income Tax Acts" has the meaning assigned to it by section 2 of the Taxes Consolidation Act 1997;

"inheritance" means an inheritance which a person is by this Act deemed to take;

"interest in expectancy" includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include a reversion expectant on the determination of a lease;

"limited interest" means -

- (a) an interest (other than a leasehold interest) for the duration of a life or lives or for a period certain, or*
- (b) any other interest which is not an absolute interest;*

"local authority" means a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014) and includes a body established under the Local Government Services (Corporate Bodies) Act 1971;

"market value", in relation to property, means the market value of that property ascertained in accordance with sections 26 and 27;

"minor child" means a child who has not attained the age of 18 years and is not and has not been married;

"personal property" means any property other than real property;

"personal representative" means the executor or administrator for the time being of a deceased person and includes -

- (a) any person who takes possession of or intermeddles with the property of a deceased person,*
- (b) any person having, in relation to the deceased person, under the law of another country, any functions corresponding to the functions, for administration purposes under the law of the State, of an executor or administrator;*

"property" includes rights and interests of any description;

"real property" means real and chattel real property;

"regulations" means regulations made under section 116;

"relative" means a relative within the meaning of subsection (4);

"return" means such a return as is referred to in section 46;

"share", in relation to a company, includes any interest whatever in the company which is analogous to a share in the company, and "shareholder" shall be construed accordingly;

"special power of appointment" means a power of appointment which is not a general power of appointment;

"successor" means a person who takes an inheritance;

"surviving civil partner", in relation to 2 individuals who were civil partners of each other until the death of one of them, means the civil partner other than the civil partner who died;

"tax" means any tax chargeable under this Act;

"the Tax Acts" has the meaning assigned to it by section 1(2) of the Taxes Consolidation Act 1997;

"valuation date" has the meaning assigned to it by section 30;

"year of assessment" has the meaning assigned to it by section 2 of the Taxes Consolidation Act 1997.

(1A) For the purposes of the definition of 'discretionary trust' in subsection (1), any entity which is similar in its effect to a discretionary trust shall be treated as a discretionary trust irrespective of how it is described in the place where it is established.

(1B) Any reference in this Act to trustees in relation to a discretionary trust shall be deemed to include persons acting in a similar capacity to trustees in relation to an entity referred to in subsection (1A).

(2) For the purpose of the definition of "general power of appointment" contained in subsection (1), a person is deemed to have a general power of appointment

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(a) notwithstanding that the person is not sui juris or is under a physical disability,

(b) over money which the person has a general power to charge on property, and

(c) over property of which the person is tenant in tail in possession.

(3) For the purpose of the definition of "disposition" contained in subsection (1), the passing by a company of a resolution which, by the extinguishment or alteration of the rights attaching to any share of the company, results, directly or indirectly, in the estate of any shareholder of the company being increased in value at the expense of the estate of any other shareholder, is deemed to be a disposition made by that other shareholder if that other shareholder could have prevented the passing of the resolution by voting against it or otherwise; and in this subsection, "share" includes a debenture and loan stock and "shareholder" includes a debenture holder and a holder of loan stock.

(4) For the purposes of this Act, the following persons and no other person are relatives of another person, that is -

(a) the spouse of that other person,

(b) the father, mother, and any child, uncle or aunt of that other person,

- (c) *any child (other than that other person), and any child of a child, of any person who is by virtue of paragraph (a) or (b) a relative of that other person, and*
 - (d) *the spouse of a person who is by virtue of paragraph (b) or (c) a relative of that other person,*
 - (e) *the grandparent of that other person.*
- (5) *For the purposes of this Act, the relationship between a child, adopted in the manner referred to in paragraph (b) of the definition of "child" contained in subsection (1), and any other person, or between other persons, that would exist if such child had been born to the adoptor or adoptors, is deemed to exist between such child and that other person or between those other persons, and the relationship of any such child and any person that existed prior to that child being so adopted is deemed to have ceased.*
- (6) *For the purposes of this Act -*
 - (a) *a reference to a person being resident in the State on a particular date is construed as a reference to that person being resident in the State in the year of assessment in which that date falls (but, for those purposes, the provisions of Part 34 of the Taxes Consolidation Act 1997, relating to residence of individuals is not construed as requiring a year of assessment to have elapsed before a determination of whether or not a person is resident in the State on a date falling in that year may be made), and*
 - (b) *a reference to a person being ordinarily resident in the State on a particular date is construed as a reference to that person being ordinarily resident in the State in the year of assessment in which that date falls.*
- (7) *In this Act, references to any enactment are, unless the context otherwise requires, construed as references to that enactment as amended or extended by any subsequent enactment.*
- (8) *In this Act, a reference to a Part, Chapter, section or Schedule is a reference to a Part, Chapter, section of, or Schedule to, this Act, unless it is indicated that reference to some other enactment is intended.*

- (9) *In this Act, a reference to a subsection, paragraph, subparagraph, clause or subclause is to the subsection, paragraph, subparagraph, clause or subclause of the provision (including a Schedule) in which the reference occurs, unless it is indicated that reference to some other provision is intended.”*

Section 3 of the CATCA 2003 entitled “Meaning of “on a death”” in force from 21 February 2003 onwards:

- “(1) *In this Act, “on a death”, in relation to a person becoming beneficially entitled in possession, means -*
- (a) *on the death of a person or at a time ascertainable only by reference to the death of a person,*
 - (b) *under a disposition where the date of the disposition is the date of the death of the disponer,*
 - (c) *under a disposition where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the death of the disponer, or*
 - (d) *on the happening, after the cesser of an intervening life interest, of any such event as is referred to in subsection (2).*
- (2) *The events referred to in subsection (1)(d) are any of the following -*
- (a) *the determination or failure of any charge, estate, interest or trust,*
 - (b) *the exercise of a special power of appointment,*
 - (c) *in the case where a benefit was given under a disposition in such terms that the amount or value of the benefit could only be ascertained from time to time by the actual payment or application of property for the purpose of giving effect to the benefit, the making of any payment or the application of the property, or*
 - (d) *any other event which, under a disposition, affects the right to property, or to the enjoyment of that property.”*

Section 10 of the CATCA 2003 entitled "Inheritance deemed to be taken" in force from 21 February 2003 onwards:

- (1) *For the purposes of this Act a person is deemed to take an inheritance, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession on a death to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.*
- (2) *Subsections (2), (4) and (5) of section 5 shall apply, with any necessary modifications, in relation to an inheritance as they apply in relation to a gift.*
- (3) *For the purposes of section 11(1)(b) and 11(2)(c), the sum referred to in section 5(2)(b) is deemed not to be situate in the State at the date of the inheritance.*
- (4) (a) *In paragraph (b), the expression "shares in a private company" is construed by reference to the meanings that "share" and "private company" have, respectively, in section 27.*
- (b) *Where a person becomes beneficially entitled in possession to a benefit, and the property in which the benefit is taken consists wholly or partly of shares in a private company and where the consideration referred to in subsection (1), being consideration in relation to a disposition, could not reasonably be regarded (taking into account the disponent's position prior to the disposition) as representing full consideration to the disponent for having made such a disposition, subsection (1) is deemed to apply as if "otherwise than for full consideration in money or money's worth paid by such person" were deleted in that subsection."*

Section 82 of the CATCA 2003 entitled "Exemption of certain receipts" in force from 23 December 2014 to 20 December 2021:

- (1) *The following are not gifts or inheritances:*
- (a) *the receipt by a person of any sum bona fide by means of compensation or damages for any wrong or injury suffered by that person in that person's person, property, reputation or means of livelihood;*

- (b) *the receipt by a person of any sum bona fide by means of compensation or damages for any wrong or injury resulting in the death of any other person;*
- (ba) *any payment to which section 205A of the Taxes Consolidation Act 1997 applies;*
- (c) *the receipt by a person of any sum bona fide by means of winnings from betting (including pool betting) or from any lottery, sweepstake or game with prizes;*
- (ca) *the receipt by a person of an award from the competition 'Your Country, Your Call' which was launched by the President on 17 February 2010,*
- (cb) *any benefit arising out of the discharge of a debt under a Debt Relief Notice (within the meaning of section 25 of the Personal Insolvency Act 2012) or arising out of the discharge or reduction in the amount of a debt under a Debt Settlement Arrangement or a Personal Insolvency Arrangement (both within the meaning of section 2 of that Act) other than by reason of payment of that debt;*
- (d) *any benefit arising out of -*
 - (i) *the payment to the Official Assignee in Bankruptcy of money which has been provided by, or which represents property provided by, friends of a bankrupt, or*
 - (ii) *a remission or abatement of debts by the creditors of a bankrupt,**to enable the bankrupt to fulfil an offer of composition after bankruptcy in accordance with section 39 of the Bankruptcy Act 1988; and*
- (e) *any benefit arising out of -*
 - (i) *the payment to the Official Assignee in Bankruptcy of money which has been provided by, or which represents property provided by, friends of an arranging debtor, or*

- (ii) *a remission or abatement of debts by the creditors of an arranging debtor,*

to enable the debtor to carry out the terms of a proposal made by that debtor under section 87 of the Bankruptcy Act 1988, which has been accepted by that debtor's creditors and approved and confirmed by the High Court.

- (2) *Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponent of money or money's worth -*

- (a) *by -*

- (i) *a minor child of the disponent or of the civil partner of the disponent, or*

- (ii) *a child of the disponent, or of the civil partner of the disponent, who is more than 18 years of age but not more than 25 years of age and is receiving full-time education or instruction at any university, college, school or other educational establishment, or who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself, or*

- (iii) *a person in relation to whom the disponent stands in loco parentis, for support, maintenance or education, or*

- (b) *by a person who is in relation to the disponent a dependent relative under section 466 of the Taxes Consolidation Act 1997, for support or maintenance,*

is not a gift or an inheritance, where the provision of such support, maintenance or education, or such support or maintenance -

- (i) *is such as would be part of the normal expenditure of a person in the circumstances of the disponent, and*

- (ii) *is reasonable having regard to the financial circumstances of the disponent.*

- (3) (a) *In this subsection "incapacitated individual", "trust funds" and "qualifying trust" have the meanings assigned to them,*

respectively, by section 189A (inserted by the Finance Act 1999) of the Taxes Consolidation Act 1997.

- (b) The receipt by an incapacitated individual of the whole or any part of trust funds which are held on a qualifying trust, or of the income from such a qualifying trust, is not a gift or an inheritance.*

(4) The receipt by -

- (a) a minor child of the disponer or of the civil partner of the disponer, or*
- (b) a child of the disponer, or of the civil partner of the disponer, who is more than 18 years of age but not more than 25 years of age and is receiving full-time education or instruction at any university, college, school or other educational establishment, or who, regardless of age, is permanently incapacitated by reason of physical or mental infirmity from maintaining himself or herself,*

of money or money's worth for support, maintenance or education, at a time when the disponer and the other parent of any such minor child or child of the disponer are dead or, in the case of any such minor child or child of the civil partner of the disponer, when the disponer and the civil partner are dead, is not a gift or an inheritance where the provision of such support, maintenance or education -

- (i) is such as would be part of the normal expenditure of a person in the circumstances of the disponer immediately before the death of the disponer, and*
- (ii) is reasonable having regard to the financial circumstances of the disponer immediately before the death of the disponer.*

(5) The references in subsections (2) and (4) to a child receiving full-time education or instruction at an educational establishment shall include references to a child undergoing training by any person (in subsection (6) referred to as 'the employer') for any trade or profession in such circumstances that the child is

required to devote the whole of his or her time to such training for a period of not less than 2 years.

- (6) *For the purposes of this section, in the case of a child undergoing training, the Commissioners may require the employer to furnish such particulars as they may reasonably require with respect to the training of the child in such form as may be prescribed by the Commissioners.”*

Section 86 of the CATCA 2003 entitled “Exemption relating to certain dwellings” in force from 25 December 2016 to 24 December 2017:

“(1) In this section -

"dwelling house" means -

- (a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and*
- (b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;*

"relevant period", in relation to a relevant dwelling house comprised in an inheritance, means the period of 6 years commencing on the date of the inheritance.

"successor", includes a transferee under an inheritance referred to in section 32(2).

- (2) *In this section a 'relevant dwelling house', in relation to a disponent or a successor, as the case may be, is a dwelling house that -*

- (a) was occupied by the disponent as his or her only or main residence at the date of his or her death,*
- (b) was continuously occupied by the successor as his or her only or main residence -*

- (i) *throughout the period of 3 years immediately preceding the date of the inheritance, or*
- (ii) *where the dwelling house replaced another dwelling house as that successor's only or main residence, the first-mentioned dwelling house and the dwelling house that was replaced as that successor's only or main residence, for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the inheritance,*

and

- (c) *is the only dwelling house to which the successor is beneficially entitled or in which the successor has a beneficial interest at the date of the inheritance of that dwelling house, whether or not that successor had such an entitlement before the date of the inheritance or acquires the entitlement by virtue of that inheritance.*
- (3) *For the purpose of subsection (2), a disposer or a successor, as the case may be, is deemed to occupy a dwelling house for a period during which he or she ceases to occupy that dwelling house in consequence of his or her mental or physical infirmity.*
 - (4) *Subject to subsections (5) and (6), a relevant dwelling house is exempt from tax in relation to the inheritance by the successor of the dwelling house and the value of the dwelling house shall not be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house.*
 - (5) *For the purposes of subsection (4), a dwelling house shall not be regarded as a relevant dwelling house where it is taken -*
 - (a) *by way of a gift, other than where it is taken by a dependent relative under subsection (9), or*
 - (b) *under a disposition referred to in paragraph (c) of section 3(1).*
 - (6) *Subject to subsection (7), a dwelling house shall cease to be regarded as a relevant dwelling house where -*

(a) *the dwelling house is sold or disposed of (either in whole or in part) within the relevant period and before the death of a successor, or*

(b) *a successor ceases to occupy the dwelling house as his or her only or main residence during the relevant period,*

and, as a consequence of such sale, disposal or cessation -

(i) *tax shall be chargeable in relation to the inheritance by the successor of the dwelling house, and*

(ii) *the value of the dwelling house shall be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house,*

as if that dwelling house had not been a relevant dwelling house at the date of the inheritance.

(7) (a) *Notwithstanding subsection (6), a dwelling house shall not cease to be regarded as a relevant dwelling house where -*

(i) *the entirety of the consideration for the sale or disposal of the dwelling house (in this subsection and in subsection (8) referred to as the 'inherited dwelling house') is used by a successor to acquire a dwelling house to replace the inherited dwelling house as the successor's only or main residence (in this subsection and in subsection (8) referred to as the 'replacement dwelling house'), the period of occupation of which as the successor's only or main residence, when added to the period of occupation of the inherited dwelling house as his or her only or main residence, amounts to an aggregate period comprising at least 6 years falling within the period of 7 years commencing on the date of the inheritance,*

(ii) *a successor is of the age of 65 years or over at the date of the inheritance of the dwelling house,*

- (iii) *a successor ceases to occupy the dwelling house in consequence of his or her mental or physical infirmity (which infirmity is certified by a registered medical practitioner who is registered in the register established under section 43 of the Medical Practitioners Act 2007), whether or not the dwelling house is sold or disposed of, or*
 - (iv) *a successor is required to be absent from the dwelling house in consequence of any condition imposed by his or her employer requiring the successor to reside elsewhere for the purposes of performing the duties of his or her employment.*
 - (b) *Subparagraphs (iii) and (iv) of paragraph (a) shall apply to a replacement dwelling house, as they apply to a relevant dwelling house.*
- (8) *Where the consideration for the sale or disposal of an inherited dwelling house, or a replacement dwelling house, as the case may be, (in this subsection referred to as the 'sold dwelling house') exceeds the consideration for the acquisition of any replacement dwelling house (in this subsection referred to as the 'acquired dwelling house') acquired as a replacement for the sold dwelling house, then the value of the sold dwelling house which is chargeable to tax under subsection (6) shall be reduced in the same proportion as the consideration for the acquired dwelling house bears to the consideration for the sold dwelling house.*
- (9)
 - (a) *In this subsection –*
 - 'relative', in relation to the disponer, or to the spouse or civil partner of the disponer, as the case may be, means lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew;*
 - 'dependent relative' means a relative who is -*
 - (i) *permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself, or*

- (ii) of the age of 65 years or over.
- (b) For the purposes of this section, a dependent relative who takes a gift of a dwelling house shall be deemed to take the dwelling house as an inheritance on the date of the gift.
- (c) Where a dependent relative takes a gift of a dwelling house, paragraph (a) of subsection (2) shall not apply for the purposes of determining whether the dwelling house is a relevant dwelling house."

Section 86 of the CATCA 2003 entitled "Exemption relating to certain dwellings" in force from 25 December 2017 to 18 December 2018:

"(1) In this section -

"dwelling house" means -

- (a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and
- (b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;

"relevant period", in relation to a relevant dwelling house comprised in an inheritance, means the period of 6 years commencing on the date of the inheritance.

"successor", includes a transferee under an inheritance referred to in section 32(2).

(2) In this section a 'relevant dwelling house', in relation to a disponent or a successor, as the case may be, is a dwelling house that -

- (a) was occupied by the disponent as his or her only or main residence at the date of his or her death,

(b) *was continuously occupied by the successor as his or her only or main residence -*

(i) *throughout the period of 3 years immediately preceding the date of the inheritance, or*

(ii) *where the dwelling house replaced another dwelling house as that successor's only or main residence, the first-mentioned dwelling house and the dwelling house that was replaced as that successor's only or main residence, for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the inheritance,*

and

(c) *is the only dwelling house to which the successor is beneficially entitled or in which the successor has a beneficial interest at the date of the inheritance of that dwelling house, whether or not that successor had such an entitlement before the date of the inheritance or acquires the entitlement by virtue of that inheritance.*

(3) *For the purpose of subsection (2), a disponent or a successor, as the case may be, is deemed to occupy a dwelling house for a period during which he or she ceases to occupy that dwelling house in consequence of his or her mental or physical infirmity.*

(4) *Subject to subsections (5) and (6), a relevant dwelling house is exempt from tax in relation to the inheritance by the successor of the dwelling house and the value of the dwelling house shall not be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house.*

(5) *For the purposes of subsection (4), a dwelling house shall not be regarded as a relevant dwelling house where it is taken -*

(a) *by way of a gift, or*

(b) *under a disposition referred to in paragraph (c) of section 3(1), unless it is taken by a dependent relative under subsection (9).*

(6) *Subject to subsection (7), a dwelling house shall cease to be regarded as a relevant dwelling house where -*

- (a) the dwelling house is sold or disposed of (either in whole or in part) within the relevant period and before the death of a successor, or*
- (b) a successor ceases to occupy the dwelling house as his or her only or main residence during the relevant period,*

and, as a consequence of such sale, disposal or cessation -

- (i) tax shall be chargeable in relation to the inheritance by the successor of the dwelling house, and*
- (ii) the value of the dwelling house shall be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house,*

as if that dwelling house had not been a relevant dwelling house at the date of the inheritance.

(7) (a) *Notwithstanding subsection (6), a dwelling house shall not cease to be regarded as a relevant dwelling house where -*

- (i) the entirety of the consideration for the sale or disposal of the dwelling house (in this subsection and in subsection (8) referred to as the 'inherited dwelling house') is used by a successor to acquire a dwelling house to replace the inherited dwelling house as the successor's only or main residence (in this subsection and in subsection (8) referred to as the 'replacement dwelling house'), the period of occupation of which as the successor's only or main residence, when added to the period of occupation of the inherited dwelling house as his or her only or main residence, amounts to an aggregate period comprising at least 6 years falling within the period of 7 years commencing on the date of the inheritance,*

- (ii) *a successor is of the age of 65 years or over at the date of the inheritance of the dwelling house,*
 - (iii) *a successor ceases to occupy the dwelling house in consequence of his or her mental or physical infirmity (which infirmity is certified by a registered medical practitioner who is registered in the register established under section 43 of the Medical Practitioners Act 2007), whether or not the dwelling house is sold or disposed of, or*
 - (iv) *a successor is required to be absent from the dwelling house in consequence of any condition imposed by his or her employer requiring the successor to reside elsewhere for the purposes of performing the duties of his or her employment.*
- (b) *Subparagraphs (iii) and (iv) of paragraph (a) shall apply to a replacement dwelling house, as they apply to a relevant dwelling house.*
- (8) *Where the consideration for the sale or disposal of an inherited dwelling house, or a replacement dwelling house, as the case may be, (in this subsection referred to as the 'sold dwelling house') exceeds the consideration for the acquisition of any replacement dwelling house (in this subsection referred to as the 'acquired dwelling house') acquired as a replacement for the sold dwelling house, then the value of the sold dwelling house which is chargeable to tax under subsection (6) shall be reduced in the same proportion as the consideration for the acquired dwelling house bears to the consideration for the sold dwelling house.*
- (9)
 - (a) *In this subsection -*
 - 'relative', in relation to the disponer, or to the spouse or civil partner of the disponer, as the case may be, means lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew;*
 - 'dependent relative' means a relative who is -*

- (i) *permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself, or*
- (ii) *of the age of 65 years or over.*
- (b) *For the purposes of this section, a dependent relative who takes a gift of a dwelling house shall be deemed to take the dwelling house as an inheritance on the date of the gift.*
- (c) *Where a dependent relative takes a gift or inheritance of a dwelling house, paragraph (a) of subsection (2) shall not apply for the purposes of determining whether the dwelling house is a relevant dwelling house.”*

Section 466 of the Taxes Consolidation Act 1997 (hereinafter the “TCA 1997”) entitled “Dependent relative tax credit”:

“(2) Where for any year of assessment a claimant proves that he or she maintains at his or her own expense any person, being -

- (a) a relative of the claimant, or of the claimant's spouse, incapacitated by old age or infirmity from maintaining himself or herself,*
- (b) the widowed father or widowed mother of the claimant or of the claimant's spouse, whether incapacitated or not, or*
- (c) a child of the claimant who resides with the claimant and on whose services the claimant, by reason of old age or infirmity, is compelled to depend,*

and being an individual whose total income from all sources for that year of assessment does not exceed a sum equal to the specified amount, the claimant shall be entitled in respect of each individual whom the claimant so maintains to a tax credit (to be known as the 'dependent relative tax credit') of €305 for the year of assessment.”

Submissions

16. No witness evidence was adduced to the Commissioner in this appeal.

Appellant's Submissions

17. The following is a summary of the submissions made on behalf of the Appellant.
18. The Appellant submitted the following grounds of appeal in his Notice of Appeal:

"The Appellant, [REDACTED], is a dependent relative of his aunt, [REDACTED], who died on the [REDACTED] 2017. He is permanently incapacitated due to ongoing mental issues, and unable to maintain himself. Mrs. [REDACTED] has provided the Appellant with certain monies and property accommodation ([REDACTED]) during his lifetime, and this property ([REDACTED]) was then transferred to the Appellant on his aunt's death together with a share of the residue of her estate.

Notices of Assessment to Capital Acquisitions Tax were originally made in 2019 in respect of taxable years 2006 to 2018. The Appellant made a voluntary disclosure dated 18 April 2023.

Subsequently, Notices of Amended Assessment dated 24 April 2023 were made in respect of taxable years 2006 to 2018. The Notices of Amended Assessment have sought to disallow the Appellant any relief to CAT relied upon by the Appellant pursuant to Section 82(2) CATA [sic] 2003 and Section 86 CATA 2003. Revenue issued a further letter dated 13 May 2003 [sic] in this matter.

The Appellant's representative, [REDACTED], has only recently been instructed in this matter and is only gradually becoming aware of the extent of the Appellant's medical condition in May 2023, subsequent to the issuance of the said Notices of Amended Assessment dated 24 April 2023 and the Revenue letter dated 13 May 2023.

This Notice of Appeal seeks to appeal the Notices of Amended Assessment dated 24 April 2023 in respect of taxable years 2006 to 2018 and the decision of Revenue by letter dated 13 May 2023. In light of the Appellant's incapacity, The Appellant relies upon the CAT exemptions pursuant to Section 82(2) CATA 2003 and Section 86 CATA 2003 in respect of gifts and inheritances received by the Appellant from his aunt, [REDACTED]."

19. The following is contained in Section 3 of the Appellant's Statement of Case entitled "Outline of Relevant Facts":

The Appellant, [REDACTED], is a dependent relative of his aunt, [REDACTED] who died on the [REDACTED] 2017. He is permanently incapacitated due to ongoing mental issues, and unable to maintain himself. Mrs. [REDACTED] has provided the Appellant with certain monies and property accommodation ([REDACTED]) during his lifetime, and this property ([REDACTED]) was then transferred to the Appellant on his aunt's death together with a share of the residue of her estate.

Notices of Assessment to Capital Acquisitions Tax were originally made in 2019 in respect of taxable years 2006 to 2018. The Appellant made a voluntary disclosure dated 18 April 2023.

Subsequently, Notices of Amended Assessment dated 24 April 2023 were made in respect of taxable years 2006 to 2018. The Notices of Amended Assessment have sought to disallow the Appellant any relief to CAT relied upon by the Appellant pursuant to Section 82(2) CATA [sic] 2003 and Section 86 CATA 2003. Revenue issued a further letter dated 13 May 2003 [sic] in this matter.

The Appellant's representative, [REDACTED], has only recently been instructed in this matter and is only gradually becoming aware of the extent of the Appellant's medical condition in May 2023, subsequent to the issuance of the said Notices of Amended Assessment dated 24 April 2023 and the Revenue letter dated 13 May 2023.

This Notice of Appeal seeks to appeal the Notices of Amended Assessment dated 24 April 2023 in respect of taxable year 2018 and the decision of Revenue by letter dated 13 May 2023. In light of the Appellant's incapacity, The Appellant relies upon the CAT exemptions pursuant to Section 82(2) CATA 2003 and Section 86 CATA 2003 in respect of inheritances received by the Appellant from his aunt, [REDACTED].

[REDACTED] I is now coming up to his [REDACTED] Birthday and therefore at the end of his working life. He is unable to support himself and has suffered a recent bereavement in his family as his younger brother has recently passed away.

This coupled with his ongoing medical condition has resulting in a further decline in his ability to support himself in any independent way. He has no one to support him financially. He is very vulnerable and emotionally struggling to survive, which his medial reports have clearly stated. He is a person that the dwelling house exemption was legislated for. Therefore we are appealing the 2018 Capital Acquisition Return in respect of the Dwelling house Exemption to be amended market value at date of death 750,000. Please find attached an amended assessment which was previously filed with the Revenue Commissioners."

20. At the oral hearing of this appeal the Appellant's Tax Agent submitted that the Appellant's Aunt had spent the last years of her life in a nursing home in [REDACTED]. It was submitted that prior to taking up residence in the nursing home, the House had been the Appellant's Aunt's main or only residence save for a short period of time when she moved to a house at [REDACTED] (hereinafter the "[REDACTED] house") to be near to the nursing home.
21. It was submitted that the Appellant was a dependent relative within the meaning of section 86(9)(a) of the CATCA 2003, that is to say that the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself at the time of his Aunt's death on [REDACTED] 2017.
22. It was submitted that the Appellant had occupied the House as his main or only residence for a period of three years immediately preceding the date of inheritance.
23. It was submitted that the Appellant did not have a beneficial interest in any other dwelling house at the date of inheritance.
24. It was submitted that the Appellant did not acquire a beneficial interest in any other dwelling house from his Aunt at any time after the date of inheritance.
25. It was submitted that the House was transferred to the Appellant on foot of an inheritance.

Respondent's Submissions

26. The Respondent submitted that the House the subject matter of this appeal was not the Aunt's main or only residence at the time of her death.
27. The Respondent submitted that the Aunt's main residence prior to her death was at the [REDACTED] house pursuant to the provision of section 86 of the CATCA 2003. The Respondent submitted that the Appellant's Aunt had moved from the [REDACTED] house into a nursing home sometime in 2010.
28. As a result, the Respondent submitted, the House does not come within the provisions for the exemption to tax contained in section 86 of the CATCA 2003 as in force at the time of the Aunt's death on [REDACTED] 2017.
29. In addition, the Respondent submitted that it does not accept that the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself such that he fell within the provisions of section 86 of the CATCA 2003 at the time of his Aunt's death on [REDACTED] 2017.

30. As a result, the Respondent submitted that the Appellant is not entitled to the exemption from CAT contained in section 86 of the CATCA 2003 as in force on the date of the Appellant inheriting the House, that is to say on [REDACTED] 2017.
31. In addition, the Respondent submitted that as the Appellant was not permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself prior to his Aunt's death, he is not entitled to the exemption from CAT contained in section 82(2) in relation to any rent free accommodation or cash gifts which he received from his Aunt during her lifetime.

Documentation Submitted

32. The following documentation was submitted on behalf of the Appellant:
- 32.1. Notice of Appeal;
 - 32.2. Notice of Amended Assessment to CAT for periods ending 31 August 2006 to 31 August 2018 inclusive;
 - 32.3. Statement of Case;
 - 32.4. Letter from Professor [REDACTED], [REDACTED], dated 28 October 2008;
 - 32.5. Letter from [REDACTED], [REDACTED], dated 7 November 2009;
 - 32.6. Letter from [REDACTED], [REDACTED], [REDACTED], dated 26 March 2018;
 - 32.7. Letter from Dr [REDACTED] General Practitioner dated 4 April 2018;
 - 32.8. Letter from Dr [REDACTED] dated 13 March 2023;
 - 32.9. Letter from Dr [REDACTED], Consultant Psychiatrist [REDACTED] service, dated 24 April 2023;
 - 32.10. Letter from Dr [REDACTED], Consultant Psychiatrist dated 10 November 2023.
 - 32.11. Letter from Dr [REDACTED], Consultant Psychiatrist dated 9 April 2024;
 - 32.12. Copy of handwritten letter from the Appellant's wife;

32.13. Submissions dated 28 February 2025.

33. The following documentation was submitted on behalf of the Respondent:

- 33.1. Portion of Form IT38 (pages 14 to 18) in relation to the Estate of [REDACTED] regarding Appellant's inheritance;
- 33.2. P45 relating to Appellant's employment from 16 April 2018 to 17 April 2018;
- 33.3. P45 relating to Appellant's employment from 25 June 2018 to 7 December 2018;
- 33.4. Appellant's LinkedIn profile printed 25 January 2018;
- 33.5. Appellant's second LinkedIn profile printed 9 August 2022;
- 33.6. Last Will and Testament of [REDACTED] executed [REDACTED] 2011;
- 33.7. Letter from Mr [REDACTED] to Local Property Tax branch of the Respondent dated 28 February 2018;
- 33.8. Letter from Local Property tax branch of Respondent to Ms [REDACTED] dated 8 May 2018;
- 33.9. Email from General Manager of [REDACTED] to [REDACTED] Solicitor dated 10 May 2018;
- 33.10. Letter from Mr [REDACTED] to Local Property Tax branch of the Respondent dated 6 June 2018;
- 33.11. Letter from [REDACTED] Solicitor to Local Property Tax Branch of the Respondent dated 3 July 2018.

Material Facts

34. The following material facts are not in dispute in this appeal and the Commissioner accepts same as material facts:

- 34.1. The Appellant is a taxpayer;
- 34.2. On foot of the death of the Appellant's Aunt on [REDACTED] 2017, the Appellant inherited a property at [REDACTED];
- 34.3. On 23 April 2023 following an investigation by the Respondent, a Notice of Amended Assessment to CAT for the period ending 31 August 2018 was issued by the Respondent to the Appellant which had a balance payable of €317,312

comprising of €288,465 in CAT and €28,846 of a late surcharge penalty in relation to the inheritance by the Appellant of the House.

35. The following material facts are in dispute in this appeal:

35.1. The location of Mrs [REDACTED] only or main residence at the time of her death;

35.2. Whether the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself prior to or at the time of Mrs [REDACTED] death.

36. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 (hereinafter "*Menolly*", Charleton J. stated at para. 22:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."

37. The standard of proof is the balance of probabilities.

The location of Mrs [REDACTED] only or main residence at the time of her death:

38. On the one hand, it is the Appellant's position that his Aunt had her main or only residence at the House at the time of her death. On the other hand, it is the Respondent's position that the Appellant's Aunt's main or only residence at the time of her death was the [REDACTED] house.

39. No documentary or oral evidence in support of the Appellant's position that his Aunt had her main or only residence at the House at the time of her death was submitted on behalf of the Appellant. In particular, no documentary or oral evidence at all in relation to the location of the Appellant's Aunt's main or only residence at the time of her death was submitted on behalf of the Appellant.

40. The Respondent submitted a number of pieces of documentary evidence in support of its position that the Appellant's Aunt's main or only residence was the [REDACTED] house, as follows:

40.1. The last Will and Testament of [REDACTED] executed on [REDACTED] 2011 which states, *inter alia*:

"THIS IS THE LAST WILL dated the [REDACTED], 2011 of me,
[REDACTED] of [REDACTED], [REDACTED]

██████████ (and presently of ██████████
██████████), Widow, **HEREBY REVOKING** all former Wills and Testamentary
Dispositions made by me.”

40.2. A portion of Form IT38 (pages 14 to 18) in relation to the Estate of ██████████
regarding Appellant’s inheritance, which was filed by the Appellant, and which
identifies his Aunt’s address as being the ██████████ house.

40.3. A letter from Mr ██████████ to the Local Property Tax branch of the
Respondent dated 28 February 2018 which states as follows:

*“I refer to previous correspondence regarding Mrs ██████████
liability to LPT.*

*Since last contacting your office, I regret to advise that Mrs ██████████ passed away
on ██████████/2017.*

*The executors of her estate have asked me to establish the LPT liability in order
that all outstanding liabilities are paid in full.*

As I understand the late Mrs ██████████ affairs, the liability should be:

(a) ██████████ *Exempt*

*Mrs ██████████ was a full time resident of ██████████ since
2010 and that property, otherwise her principal private residence, was
vacant during the period 2010 to 2017 inclusive.*

(b) ██████████ *€5,950*

*Unfortunately the issue of the “forced” occupancy of this property by the
nephew Mr ██████████ was never resolved, therefore we assume LPT
will fall to be paid, by her estate, by default.”*

41. An email from General Manager of ██████████ to ██████████
Solicitor dated 10 May 2018 which states:

*“I can confirm that ██████████ was admitted to ██████████
██████████ on the ██████████ December 2010.*

*██████████ remained a resident here until she passed away on the ██████████
2017.”*

42. A letter from Mr ██████████ to the Local Property Tax branch of the Respondent
dated 6 June 2018 which stated, *inter alia*:

“(1) I can confirm that Mrs [REDACTED] was the registered owner of the property at [REDACTED] and that it was her principal private residence before entering [REDACTED].

(2) The property was vacated by her, in lieu of [REDACTED], as a result of her long term physical disability.

...”

43. At the oral hearing of this appeal, the Appellant’s Tax Agent submitted that the information contained in the above correspondence was not correct and that the person writing to the Respondent’s Local Property Tax branch was not in possession of the correct information in relation to the Appellant’s Aunt’s living situation prior to entering the nursing home.
44. The Appellant’s Tax Agent submitted that the Appellant’s Aunt had her main residence at the House up until a short time before she entered the nursing home in [REDACTED] 2010 when she moved to the [REDACTED] house.
45. The Commissioner asked the Appellant’s Tax Agent whether she had any documentary or witness evidence to submit which would establish her claims in relation to the Appellant’s Aunt’s main residence prior to entering the nursing home. The Tax Agent confirmed that she did not have any such evidence.
46. The Commissioner has had regard to the judgment of Nolan J. in *Cornelius O’Sullivan v The Revenue Commissioners* [2024] IEHC 611 where he stated at paragraph 108:

“However, submissions are not evidence, they are simply submissions.”

47. The Commissioner has considered the evidence received in relation to this material fact. Whilst no oral evidence was adduced to the Commissioner, the documentary evidence as set out at paragraph 39 of this determination sets out that the Appellant’s Aunt’s main residence prior to entering the nursing home was at the [REDACTED] [REDACTED].
48. In coming to this finding, the Commissioner notes that:
- 48.1. The Appellant’s Aunt’s last Will and Testament which was executed on [REDACTED] [REDACTED] 2011 states that her address was the [REDACTED] house prior to her taking up residence at the nursing home;
- 48.2. The letters from Mr [REDACTED] to the Local Property Tax branch of the Respondent dated 28 February 2018 and 6 June 2018 both confirm that the Appellant’s Aunt’s main residence was the [REDACTED] property prior to her taking up residence at the nursing home;

48.3. The letter from Mr [REDACTED] to the Local Property Tax branch of the Respondent dated 6 June 2018 confirms that Mrs [REDACTED] took up residence at the nursing home as a result of her long term physical disability;

48.4. The Form IT38 filed by the Appellant regarding Appellant's inheritance which identifies his Aunt's address as being the [REDACTED] house.

49. Section 86(3) of the CATCA 2003 provides that:

"(3) For the purpose of subsection (2), a disposer or a successor, as the case may be, is deemed to occupy a dwelling house for a period during which he or she ceases to occupy that dwelling house in consequence of his or her mental or physical infirmity."

50. The Commissioner accepts, and there is no dispute between the parties, that the Appellant's Aunt moved to the nursing home in 2010 as a result of her mental or physical infirmity. As a result of the above, the Commissioner must find, on the balance of probabilities and based on the documentary evidence submitted, that the location of Mrs [REDACTED] main residence at the time of her death was the [REDACTED] house.

51. Therefore the Commissioner finds as a material fact that the location of Mrs [REDACTED] only or main residence at the time of her death was the [REDACTED] house.

Whether the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself prior to or at the time of Mrs [REDACTED] death.

52. The submissions made on behalf of the Appellant claim that, prior to and at the time of his Aunt's death on [REDACTED] 2017, the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.

53. In support of this claim the following documentation was submitted:

53.1. A letter from Professor [REDACTED] [REDACTED], dated 28 October 2008;

53.2. A letter from [REDACTED] dated 7 November 2009;

53.3. A letter from [REDACTED], dated 26 March 2018;

53.4. A letter from Dr [REDACTED] General Practitioner dated 4 April 2018;

53.5. A letter from Dr [REDACTED] dated 13 March 2023;

- 53.6. A letter from Dr [REDACTED], [REDACTED], dated 24 April 2023;
- 53.7. A letter from Dr [REDACTED], Consultant Psychiatrist dated 10 November 2023.
- 53.8. A letter from Dr [REDACTED], Consultant Psychiatrist dated 9 April 2024;
54. The letter from Professor [REDACTED], dated 28 October 2008 was addressed to the Appellant's GP and stated:
- "[The Appellant] came to see me. I had seen him previously. Based on today's discussion he would meet the criteria for Post Traumatic Stress Disorder DSM-IV this would be based on the chronic stress that he has been under over the years. He also has an obsessive compulsive personality type. I understand what he describes as a breakdown in 2005 and that you treated him for this. He is somebody who needs Adult Psychotherapy to cope with the stress that he has been under over the years and its current manifestations."*
55. The letter from [REDACTED], dated 7 November 2009 was a general note which stated:
- "I met [the Appellant] on the 24th October and on the basis of the conversation which we had on that day I formed the opinion that he is extremely stressed and anxious and showing all the symptoms that in my opinion are consistent with the trauma associated with living with active addiction. He told me he has started seeing a psychotherapist and I strongly recommended that he continue with this."*
56. The letter from [REDACTED], dated 26 March 2018 was a letter which noted that the Appellant had been referred [REDACTED] for an outpatient review and noted that further information was required from the Appellant in the form of a self-assessment form.
57. The letter from Dr [REDACTED] General Practitioner dated 4 April 2018 stated that:
- "[The Appellant] is on medication and has been referred to a psychiatrist. He is unable to deal with any financial matters pro tem. However once his psychiatrist confirms that he is capable to deal with such matters he will immediately attend to all outstanding financial business."*
58. The letter from Dr [REDACTED] dated 13 March 2023 was addressed to the Appellant's GP and stated that:

"[The Appellant] has been attending [REDACTED]. Before Christmas he met myself and one of the consultants on the team, who had suggested that [the Appellant] may have some symptoms of ADHD. [The Appellant] has a previous diagnosis of dysthymia. [The Appellant] filled in various self assessment forms about ADHD symptoms (please see attached copies of same) as we had requested which combined with the history he describes are suggestive of ADHD.

No formal diagnosis of ADHD has been made, as you know this assessment process is carried out by the [REDACTED], as well as by several private psychiatrists. [The Appellant] is aware of the waitlist time for the [REDACTED] and is interested in onward GP referral to private psychiatrists who carry out ADHD assessments ore quickly {hence why I am sending you copies of the ADHD forms he filled in, in case when referring to private service you want to send them on too).

[The Appellant's] case will continue to be open with [REDACTED], until he is seen by [REDACTED] or until he attends another psychiatric service. He is planning to link in which private clinical psychology for 1:1 experiences and the difficulties he has experienced."

59. The letter from Dr [REDACTED], dated 24 April 2023 was addressed to a team at [REDACTED] and stated that:

*"Thank you for your referral for [the Appellant] to the [REDACTED]. We have accepted this referral and placed them on our waitlist on **18/04/2023**. Due to the current level of demand and resourcing for the service, the current waiting time for new assessments is likely to be 12 Month +. Unfortunately, it is not possible to expedite assessment appointments.*

If [the Appellant] continues to attend your Community Mental Health Team while they are awaiting an assessment with the [REDACTED], they should continue to engage with any interventions recommended by your team and contact you team or their GP should any urgent menta health concerns arise.

If [the Appellant] has been discharged by your team to their GP while they are awaiting an assessment with the [REDACTED], if urgent mental health concerns arise, their GP can determine the most appropriate supports required including re-referral to your Community Mental Health Team if necessary.

We would also recommend that [the Appellant] visits the ADHD Ireland website at www.adhdireland.ie and engages with those supports that they feel would benefit them. ADHD Ireland is a resource for those affected by ADHD which work with people with an existing diagnosis, and those who suspect they have ADHD. Some of their

resources include support groups, peer support training, reading materials and phone and email support.

We will contact you when we have an assessment date for [the Appellant]...”

60. In his letter of 10 November 2023, Dr [REDACTED] sets out that he was engaged by the Appellant to “...provide a brief report in relation to his current mental health and the background information available to me from the clinical notes provided by Dr [REDACTED] [REDACTED] (Adult ADHD) team that serve [the Appellant’s] psychiatric sector for mental health services.”
61. The letter goes on to set out a history of the documentation set out in paragraph 39 of this determination. Following that the letter states:

“[The Appellant] attended with me on the 17th of August 2023 when he was [REDACTED] years old. We had a long discussion in relation to his difficulties and while there is mention in the notes from [REDACTED] that he has no formal diagnosis of Attention Deficit Hyperactivity Disorder or Autism Spectrum Disorder, it was quite obvious from our meeting that he suffers with severe Attention Deficit Hyperactivity Disorder, his inattention being such that he describes himself as having “no working memory”. He is quite right in his description as his level of hyper cognition and extreme distractibility makes it exceptionally difficult for him to be actively attending to what is going on or indeed what is being said to him at any given time. While he is able to respond verbally to direct questioning, his ability to describe events in any form of sequential order going back some 15 – 20 years is very poor. [The Appellant] was referred to me on the basis that he was coming for a “medication review” and so our time was limited, although his 1 hour appointment was substantially longer than that.

...

This leads to a situation of a “double GAD” i.e. a seasonally amplified free floating anxiety from the ASD-element in combination with the specific anxiety related to, for example, making annual returns to the Revenue Commissioners and this condition is generally so severe in its intensity that it renders the individual suffering from same to lack Capacity to manage their own financial affairs. Having spoken with [the Appellant] for approximately 90 minutes on the 17/08/2023 and subsequently by telephone, at which time he was still unable to tell me exactly what medication he is currently prescribed, it is clear to me that on both occasions he lacked Capacity to take responsibility for his personal financial matters and given his age, it is likely that he has suffered with a very severe impairment in his cognitive function, both prior to 2020

when he was requiring referral to neurology and psychiatry, and specifically to [REDACTED], who, because of his own mental health in latter years had difficulty discerning the presentation of those who had both an Autism Spectrum condition and ADHD which did not manifest with physical hyperactivity but which was most certainly present in terms of the hyperactivity within their cognition.

...

[The Appellant's] Capacity to carry out the work necessary to complete his financial returns to this date would be greatly enhanced were he to be treated in accordance with the severity of his condition and with a reasonable degree of empathy for a man who has suffered an extremely high level of disabling Generalized Anxiety Disorder for at least a decade..."

62. In his letter of 9 April 2024, Dr [REDACTED] stated:

"[The Appellant] has suffered with an extremely disabling condition for the past 25 years or so. The level of Anxiety associated with this condition is the highest for any mental health condition. Resolution of this condition has been impossible to General Adult Psychiatry to date. As the only independent High Court Expert Advisor in these Neurodevelopment Complexes of Autism Spectrum Disorders, I have given testimony on the severity of the conditions and the complexity of the treatment required to designate persons as having the capacity to deal with their taxation and Revenue-related issues.

[The Appellant] is doing everything in his power to combat the exceptional level of anxiety he is experiencing. It would not surprise me if the High Court designated him as a "Vulnerable Adult" and made him a Ward of Court to protect his welfare and his home. There have been precedents in which I have successfully advocated for same.

However, his legal representative would be the person who would initiate such proceedings. In the meanwhile, [the Appellant] is complying with his medical treatments and a period of 3-6 months to acquire the ability and capacity to deal with outstanding revenue issues would be reasonable, and just. He is not a "tax-evader", just an autistic man with anxiety-induced "brain-freeze" who wishes to do the right thing."

63. In circumstances where the Respondent had, in its submissions, made it clear that it did not accept that the Appellant was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself prior to or at the date of his Aunt's death on [REDACTED] 2017, the Commissioner asked the Appellant's Tax Agent whether

Dr [REDACTED] was appearing as a witness at the oral hearing. The Tax Agent stated that he was not. It was the Appellant's Tax Agent's position that, because the Respondent had not indicated that it did not accept the letters from Dr [REDACTED], she had not arranged for his attendance at the oral hearing.

64. In addition, the Commissioner asked the Appellant's Tax Agent whether she had engaged with the Respondent in an effort to agree the contents of the medical letters prior to the oral hearing. She confirmed that she had not.
65. No application for an adjournment of the oral hearing to allow the Tax Agent arrange for Dr [REDACTED], or any other clinician, to give evidence to the Commissioner was made.
66. The Commissioner notes the role of an expert witness in civil proceedings has been considered by the Court of Appeal in Duffy v McGee [2022] IECA 254 (hereinafter "McGee"). In McGee, Collins J stated the following:

"17. The position in this jurisdiction as regards the issue of reliability would therefore appear to be as follows. There is no general requirement that expert evidence must meet any specific threshold of reliability as a condition of admissibility nor do the Irish courts have the "gatekeeping" function contemplated by Daubert. However, in any given case the admissibility of expert evidence may be challenged on the basis that it lacks a reliable scientific or methodological foundation. At what stage of the proceedings, and in what manner, such a challenge should be determined is a matter for case-by-case assessment. Finally, even where admissible, issues of reliability may properly affect the weight to be given to expert evidence.

18. The point made by the Law Reform Commission about the importance of the trier of fact reaching (and being in a position to reach) their own independent conclusion on the weight, if any, to be given to expert evidence highlights another significant issue. In civil proceedings, the weight to be given to evidence, including expert evidence, is always a matter for the court. Even if uncontradicted, a court is not obliged to accept the evidence of an expert witness, any more than it is obliged to accept the uncontradicted evidence of a witness of fact... There is no principle that greater weight is to be given to expert evidence than to ordinary evidence of fact. Ultimately it is always a matter for the court to resolve disputed issues of fact and, while that process may be assisted by expert evidence, the court must not surrender its judgement to experts, however well-qualified they may appear to be.

19. To properly perform its function, the court must be able to understand and engage with the evidence, which in turn requires that experts should sufficiently explain their

opinions and the basis for them. Their entitlement to express such opinions “is predicated upon also informing the court of the factors which make up their opinion and supplying to the court the elements of knowledge which their long study and experience has furnished to them whereby they have formed that opinion so that, in those circumstances, the court may be enabled to take a different view: Flynn v Bus Eireann [sic] [2012] IEHC 398, per Charleton J at para 9. It follows that the expert witness must “provide material on which a court can form its own conclusions on relevant issues” (Pora v The Queen [2016] 1 Cr App R 3, at para 24). Mere assertion or “bare ipse dixit” on the part of the expert witness is, accordingly, “worthless”: Kennedy v Cordia (Services) LLP [2016] UKSC 6, [2016] 1 WLR 597, at para 48.

...

67. In considering this material fact, the Commissioner is also mindful of the obligation on a decision maker to afford fair procedures to all sides to a dispute and in particular to afford one side the opportunity to challenge evidence put forward by the other side by way of cross examination. In this regard the Commissioner is mindful of the judgment of Henchy J in *Kiely v Minister for Social Welfare (No. 2)* [1977] IR 267 where it was held:

"This court has held in cases such as in Re Haughey¹, that Article 40, s. 3 of the Constitution implies a guarantee to the citizen of basic fairness of procedures. The rules of natural justice must be construed accordingly. Tribunals exercising quasi-judicial functions are frequently allowed to act informally - to receive unsworn evidence, to act on hearsay, to depart from the rules of evidence, to ignore courtroom procedures and the like - but they may not act in such a way as to imperil a fair hearing or fair result. I do not attempt an exposition of what they may do for, to quote the frequently-cited dictum of Tucker LJ in Russell v Duke of Norfolk², "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the proceedings. Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in its evidence in writing free from the truth eliciting process of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral

¹ [1971] I.R. 217

² [1949] 1 All E.R. 109, 118

examination and cross-examination. The dispensation of justice in order to achieve its ends must be even-handed in form as well as in content. Any lawyer of experience could readily recall cases where injustice would certainly have been done if a party or a witness who had committed his evidence to writing had been allowed to stay away from the hearing, and the opposing party had been confined to controverting him simply by adducing his own evidence. In such cases, it would be cold comfort to the party who had been thus unjustly vanquished to be told that the tribunal's conduct was beyond review because it had acted on logically probative evidence and had not stooped to the level of spinning a coin or consulting an astrologer. Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side, but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side, has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice."

68. It was open to the Appellant, and to his Tax Agent, to call one of the Appellant's clinicians to give evidence in relation to his mental health and in relation to his capacity to maintain himself around the time of his Aunt's death on [REDACTED] 2017. No such evidence was adduced to the Commissioner.
69. In the absence of any witness evidence from anyone, to include any clinician, on behalf of the Appellant, and in the interest of natural justice, the Commissioner has considered all of the documentation submitted on behalf of the Appellant in relation to his mental health.
70. The documentation submitted dates from the years 2008, 2009, 2018, 2023 and 2024. None of the documentation submitted is dated 2017 which is the year in which the Appellant's Aunt died. As a result, the Commissioner has no guidance as to the state of the Appellant's mental health in December 2017 at the time of his Aunt's death.
71. Whilst the Commissioner accepts that, on reading the documentation submitted, the Appellant has experienced poor mental health since at least 2008, the Commissioner notes that none of the documentation states that the Appellant was at any time permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.
72. The Commissioner notes that there is a time lapse of almost 9 years between the letter from [REDACTED], dated 7 November 2009 until the letter from Dr [REDACTED] General Practitioner dated 4 April 2018 which stated that the Appellant was unable, at that time, to deal with any financial matters but stated that, once the Appellant's psychiatrist confirmed that he was capable to deal with such matters he

would immediately attend to all outstanding financial business. Nothing in that correspondence is indicative that the Appellant was at any time permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.

73. In addition, nothing in the correspondences from Dr [REDACTED] dated 13 March 2023 or from Dr [REDACTED] dated 24 April 2023 is indicative that the Appellant was at any time permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.
74. Further, nothing in the correspondence from Dr [REDACTED] 10 November 2023 is indicative that the Appellant was at any time permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.
75. In addition, the Commissioner notes that in his correspondence of 9 April 2024, Dr [REDACTED] stated that, at that time, the Appellant was complying with his medical treatments and that a period of 3 to 6 months to acquire the ability and capacity to deal with outstanding revenue issues would be reasonable and just. Again, nothing in that correspondence is indicative that the Appellant was at any time permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.
76. In considering this material fact, the Commissioner has also had regard to the P45 records in relation to the Appellant submitted by the Respondent. The Commissioner notes that a P45 relating to the Appellant's employment from 16 April 2018 to 17 April 2018 indicates that he was paid €144 for one day of employment.
77. The Commissioner further notes that the P45 relating to Appellant's employment from 25 June 2018 to 7 December 2018 indicates that he was paid €13,652.92 during that period. Whilst the Commissioner notes that whilst not all of that employment falls within the tax period from 1 September 2017 to 31 August 2018, some of it does. At the oral hearing the Tax Agent made submissions in relation to this employment stating that she was instructed that this related to outstanding fees to which the Appellant was entitled from a firm of solicitors which, she stated, chose to pay him by way of an employment. The Commissioner asked the Tax Agent whether she had any evidence of this and she confirmed that she did not.
78. In addition, the Commissioner notes the Appellant's LinkedIn profile which was printed on 25 January 2018 which stated that the Appellant had, at that time, been employed as a [REDACTED] since December 2016 and that he was Managing Director of [REDACTED] since July 1988.

79. In addition, the Commissioner notes a second LinkedIn profile for the Appellant which was printed 9 August 2022 which stated that the Appellant was, at that time, Managing Director of [REDACTED] since July 1988.
80. As previously set out in this determination, the burden of proof in tax appeals rests on Appellant's and the standard of proof is the balance of probabilities.
81. Having considered this material fact, the Commissioner finds that the Appellant's has not discharged the burden to establish that, prior to or at the time of his Aunt's death he was permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself. This is on the basis that:
- 81.1. the medical documentation submitted does not establish that the Appellant was, at any time, permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself;
- 81.2. the Appellant was employed during the tax period ending 31 August 2018.
82. As a result, the Commissioner finds as a material fact that, prior to or at the time of his Aunt's death on [REDACTED] 2017, the Appellant was not permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.

Findings of Material Fact

83. For the avoidance of doubt, the Commissioner makes the following findings of material fact in this appeal:
- 83.1. The Appellant is a taxpayer;
- 83.2. On foot of the death of the Appellant's Aunt on [REDACTED] 2017, the Appellant inherited a property at [REDACTED];
- 83.3. On 23 April 2023 following an investigation by the Respondent, a Notice of Amended Assessment to CAT for the period ending 31 August 2018 was issued by the Respondent to the Appellant which had a balance payable of €317,312 comprising of €288,465 in CAT and €28,846 of a late surcharge penalty in relation to the inheritance by the Appellant of the House.
- 83.4. The location of Mrs [REDACTED] only or main residence at the time of her death was the [REDACTED] house.

- 83.5. Prior to or at the time of his Aunt's death on [REDACTED] 2017, the Appellant was not permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself.

Analysis

84. Section 10(1) of the CATCA 2003 provides that:

“(1) For the purposes of this Act a person is deemed to take an inheritance, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession on a death to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.

85. Section 3(1)(a) of the CATCA 2003 defines the meaning of “on a death” as being:

“In this Act, "on a death", in relation to a person becoming beneficially entitled in possession, means -

- (a) on the death of a person or at a time ascertainable only by reference to the death of a person,*
...

86. Section 2 of the CATCA 2003 defines the “date of inheritance” as meaning:

“(c) in any other case, the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit,
and a reference to the time when an inheritance is taken is construed as a reference to the date of the inheritance;”

87. As a result, the Appellant was deemed to have taken the inheritance of the House on the date of his Aunt's death on [REDACTED] 2017.

88. “Successor” is defined in section 2 of the CATCA 2003 as meaning a person who takes an inheritance.

89. Since its enactment, section 86 of the CATCA 2003 has been amended from time to time. The relevant version of section 86 of the CATCA 2003 is that which was in force between 25 December 2016 and 24 December 2018, that is to say the version which was in force

on the date of the Appellant's Aunt's death and on the date on which the Appellant was deemed to have taken the inheritance of the House, [REDACTED] 2017.

90. Section 86(1) defines a "dwelling house" as meaning:

- "(a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and*
- (b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;"*

91. Section 86(2) defines a "relevant dwelling house" as meaning:

"(2) In this section a 'relevant dwelling house', in relation to a disponent or a successor, as the case may be, is a dwelling house that -

- (a) was occupied by the disponent as his or her only or main residence at the date of his or her death,*
- (b) was continuously occupied by the successor as his or her only or main residence -*
 - (i) throughout the period of 3 years immediately preceding the date of the inheritance, or*
 - (ii) where the dwelling house replaced another dwelling house as that successor's only or main residence, the first-mentioned dwelling house and the dwelling house that was replaced as that successor's only or main residence, for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the inheritance,*

and

- (c) is the only dwelling house to which the successor is beneficially entitled or in which the successor has a beneficial interest at the date of the inheritance of that dwelling house, whether or not that successor had*

such an entitlement before the date of the inheritance or acquires the entitlement by virtue of that inheritance.”

92. “Disponer” has been defined in section 2 of the CATCA 2003 as meaning:

“...the person who, for the purpose of the disposition, directly or indirectly provided the property comprised in the disposition, and in any case where more than one person provided the property each is deemed to be the disposer to the extent that that disposer so provided the property; and for the purposes of this definition -

(a) the testator is the disposer in the case of a disposition referred to in paragraph (k) of the definition of "disposition",

...”

93. The definition of “*disposition*” as contained in section 86 of the CATCA 2003 is defined as including:

“(k) a will or other testamentary disposition,”

94. The Commissioner therefore determines that the Appellant's Aunt, as the testator of the Last Will and Testament executed on [REDACTED] 2011, was the disposer of the House.

95. There is no dispute between the parties, and the Commissioner determines, that the House was a “*dwelling house*” within the meaning of section 86 of the CATCA 2003.

96. The Commissioner must determine whether the House was a “*relevant dwelling house*” within the meaning of section 86 of the CATCA 2003.

97. In his decision in *Revenue Commissioners v. Doorley* [1933] I.R. 750, Kennedy CJ stated the following in relation to the interpretation of taxation statutes where they relate to exemptions from tax at page 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”.

98. In addition, in the judgment of the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter “Perrigo”), McDonald J, reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

“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”.

These principles have been confirmed in the more recent decision of the Supreme Court in its decision in *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43.

99. The plain and ordinary meaning of the provisions of section 86(2) of the CATCA 2003, as in force from 25 December 2016 to 24 December 2017, is that all three of the requirements for a property to be a “*relevant dwelling house*” must be satisfied. That is to say that in order for a property to be a “*relevant dwelling house*” it must have been:

99.1. occupied by the disponent as his or her only or main residence at the date of his or her death, and

99.2. continuously occupied by the successor as his or her only or main residence:

99.2.1. throughout the period of 3 years immediately preceding the date of the inheritance, or

99.2.2. where the dwelling house replaced another dwelling house as that successor's only or main residence, the first-mentioned dwelling house and the dwelling house that was replaced as that successor's only or main residence, for periods which together comprised at least 3 years falling

within the period of 4 years immediately preceding the date of the inheritance, and

99.3. the only dwelling house to which the successor was beneficially entitled or in which the successor has a beneficial interest at the date of the inheritance of that dwelling house, whether or not that successor had such an entitlement before the date of the inheritance or acquires the entitlement by virtue of that inheritance.

100. The Commissioner has already determined as a material fact that the location of the Appellant's Aunt's only or main residence at the time of her death was the [REDACTED] house. As the House at [REDACTED] was not the Appellant's Aunt's only or main residence at the time of her death, it therefore follows, and the Commissioner determines, that the House at [REDACTED] could not be, and was not, a "*relevant dwelling house*" as defined in section 86(2) of the CATCA 2003.

101. Section 86(4) of the CATCA 2003, as in force between 25 December 2016 and 24 December 2017, provides that:

"(4) Subject to subsections (5) and (6), a relevant dwelling house is exempt from tax in relation to the inheritance by the successor of the dwelling house and the value of the dwelling house shall not be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house."

102. As the House was not a "*relevant dwelling house*" within the meaning of section 86 of the CATCA 2003, the Commissioner must determine that the exemption from tax contained in section 86(4) of the CATCA 2003, as in force between 25 December 2016 and 24 December 2017, is not applicable to the House.

103. The Commissioner has also considered whether the provisions of section 86(9) of the CATCA 2003 apply to the Appellant. Section 86(9) of the CATCA 2003, as in force from 25 December 2016 to 24 December 2017, provides:

"(9) (a) In this subsection –

'relative', in relation to the disponent, or to the spouse or civil partner of the disponent, as the case may be, means lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew;

'dependent relative' means a relative who is –

- (i) *permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself, or*
 - (ii) *of the age of 65 years or over.*
- (b) *For the purposes of this section, a dependent relative who takes a gift of a dwelling house shall be deemed to take the dwelling house as an inheritance on the date of the gift.*
- (c) *Where a dependent relative takes a gift of a dwelling house, paragraph (a) of subsection (2) shall not apply for the purposes of determining whether the dwelling house is a relevant dwelling house.”*

104. The Commissioner has already found as a material fact that, at the time of his Aunt’s death, the Appellant was not permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself. It therefore follows, and the Commissioner determines that the Appellant was not a “*dependent relative*” within the meaning of section 86(9) of the CATCA 2003.

105. Even if the Commissioner is wrong in this finding, the Appellant took the House as an inheritance and did not take the House as a gift. As a result of the Appellant taking the House as an inheritance following the death of his Aunt on [REDACTED] 2017, the Commissioner determines that the provisions of section 86(9)(c) of the CATCA 2003 do not and cannot apply to the House.

106. The Commissioner further notes that section 86 of the CATCA 2003 was amended and the version of section 86(9)(c) of the CATCA 2003 which applied from 25 December 2018 provided that:

- “(c) *Where a dependent relative takes a gift or inheritance of a dwelling house, paragraph (a) of subsection (2) shall not apply for the purposes of determining whether the dwelling house is a relevant dwelling house.”*

107. This means that, from 25 December 2017, the exemption to tax in relation to a dependent relative taking a dwelling house extended from gifts to gifts and inheritances. However, as the Appellant’s Aunt died on [REDACTED] 2017, prior to 25 December 2017, and as the Appellant took the house as an inheritance on [REDACTED] 2017, this provision did not apply to the House.

108. The Commissioner has also considered whether the Appellant is entitled to the exemption to tax in relation to any rent free accommodation or cash gifts which he received from his Aunt during her lifetime.

109. Section 82(2)(b) of the CATCA 2003 provides that:

“Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponent of money or money's worth –

...

(b) by a person who is in relation to the disponent a dependent relative under section 466 of the Taxes Consolidation Act 1997, for support or maintenance, is not a gift or an inheritance, where the provision of such support, maintenance or education, or such support or maintenance -

(i) is such as would be part of the normal expenditure of a person in the circumstances of the disponent, and

(ii) is reasonable having regard to the financial circumstances of the disponent.”

110. Section 466(2)(a) of the TCA 1997 defines a dependent relative as being: *“a relative of the claimant, or of the claimant's spouse, incapacitated by old age or infirmity from maintaining himself or herself”*.

111. The Commissioner has already found as a material fact that, prior to or at the time of his Aunt's death, the Appellant was not permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself. It therefore follows, and the Commissioner determines that the Appellant was not a *“dependent relative”* within the meaning of section 466 of the TCA 1997.

112. It therefore follows that the Appellant was not a dependent relative of his Aunt for the purposes of section 82(2) of the CATCA 2003 and that the Appellant is not entitled to avail of the exemption to tax contained in section 82 of the CATCA 2003.

Conclusion

113. In addition to the findings of material fact made by the Commissioner, the Commissioner has determined the following:

113.1. The Appellant was deemed to have taken the inheritance of the House on the date of his Aunt's death on [REDACTED] 2017.

- 113.2. The Appellant's Aunt, as the testator of the Last Will and Testament executed on [REDACTED] 2011, was the disponent of the House.
- 113.3. The House was a "*dwelling house*" within the meaning of section 86 of the CATCA 2003.
- 113.4. The House was not a "*relevant dwelling house*" within the meaning of section 86 of the CATCA 2003.
- 113.5. The exemption from tax contained in section 86(4) of the CATCA 2003, as in force between 25 December 2016 and 24 December 2017, is not applicable to the House.
- 113.6. The Appellant was not a "*dependent relative*" within the meaning of section 86(9) of the CATCA 2003.
- 113.7. As a result of the Appellant taking the House as an inheritance following the death of his Aunt on [REDACTED] 2017, the provisions of section 86(9)(c) of the CATCA 2003, as in force between 25 December 2016 and 24 December 2017, do not and cannot apply to the House.
- 113.8. The Appellant was not a "*dependent relative*" within the meaning of section 82(2) of the CATCA 2003.
- 113.9. The Appellant is not entitled to avail of the exemption to tax contained in section 82 of the CATCA 2003.

Determination

114. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal and determines that the Notice of Amended Assessment to CAT issued by the Respondent on 25 April 2023 shall stand.
115. 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

116. 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

117. 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.



Clare O'Driscoll
Appeal Commissioner
16 June 2025

Annex 1



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between



Appellant

and

Revenue Commissioners

Respondent

Decision on Validity of Appeal

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Introduction

1. The Appellant seeks to appeal to the Tax Appeals Commission (“the Commission”) Notices of Amended Assessment made by the Respondent on 25 April 2023 in respect of returns filed by the Appellant for the years 2006-2018 and the decision made by the Respondent as stated in its letter of 13 May 2023.
2. The Appellant submitted a Notice of Appeal dated 24 May 2023 (“the Notice of Appeal”) to the Commission. The Respondent further to the provisions of section 949L of the Taxes Consolidation Act 1997 (“the TCA 1997”) objects to the Commission accepting the Notice of Appeal.
3. The Respondent submits that the appeal is not a valid appeal as it is not in compliance with the provisions of section 949J of the TCA 1997.
4. This decision considers that objection.

Background

5. The Appeal Commissioner (“the Commissioner”) sets out hereunder an overview of the correspondence had between the parties and/or the Commission regarding the Appellant’s appeal. The Commissioner finds that it is not necessary to cite each and every piece of correspondence nor the entirety of the contents of each piece of correspondence which is cited hereunder as the parties and the Commissioner are familiar with the contents of the correspondence between them and/or the Commission.
6. There was correspondence between the Respondent and the Appellant regarding the Appellant’s tax affairs in 2018.
7. On 5 April 2018 the Appellant met with representatives of the Respondent. During the meeting the Appellant stated he wanted to make a disclosure regarding gifts he had received. The Appellant was advised by the Respondent that any disclosure must be made in writing, that it be full and complete and include payment for the amount of tax and that it be submitted to the Respondent on or before 26 April 2018.
8. On 14 May 2018 the Respondent notified the Appellant that in the absence of a disclosure the Appellant was under investigation by the Respondent.
9. On 29 May 2019 the Respondent raised Notices of Assessment for Capital Acquisitions Tax (“CAT”) against the Appellant for the years 2006-2017.
10. On 7 June 2019 the Respondent raised a Notice of Assessment for CAT for the year 2018.

11. On 7 February 2022 the Appellant's agent registered with the Respondent as the Appellant's agent ("the Agent").
12. On 5 April 2023 the Respondent wrote to the Agent and advised that the Appellant had one final opportunity to finalise matters with the Respondent and that in the absence of agreement a Notice of Opinion would be issued to seek payment of the penalty due and the tax liability would be sent for enforcement.
13. On 13 April 2023 the Agent using their National Tax Advisory Identity Number ("TAIN") filed tax returns for CAT online with the Respondent for the period 2006-2018.
14. On 18 April 2023 the Appellant submitted to the Respondent a disclosure for the period 2006-2018.
15. On 20 April 2023 a meeting requested by the Agent was held between the Appellant, the Agent and two (2) representatives of the Respondent ("Meeting on 20 April 2023").
16. On 25 April 2023 the Respondent issued Notices of Amended Assessment for the years 2006-2018.
17. On 27 April 2023 the Respondent wrote to the Agent and stated inter alia that they were giving to them an "...*updated settlement offer following our meeting held on 20 April 2023*". The Respondent further stated that mitigation of the penalty would be given if there was "...*full co-operation and no further delays in finalising the case*".
18. On 13 May 2023 the Respondent wrote to the Agent and sought further information from them. The Respondent advised that the assessment to CAT for 2017-2018 was correct. The Respondent further stated that unless a signed settlement offer was received by close of business 19 May 2023 to include a full proposal for settlement of the outstanding liabilities then the matter would be referred for enforcement. Further the Respondent advised that a Notice of Opinion would thereafter issue.
19. On 24 May 2023 the Appellant submitted a Notice of Appeal to the Commission against the Notices of Amended Assessment issued by the Respondent and the decision of the Respondent in its letter of 13 May 2023.

The Appellant's grounds of appeal are:

"The Appellant, [REDACTED], is a dependent relative of his aunt, [REDACTED], who died on the [REDACTED] 2017. He is permanently incapacitated due to ongoing mental issues, and unable to maintain himself. Ms. [REDACTED] has provided the Appellant with certain monies and property accommodation ([REDACTED]) during

his lifetime, and this property ([REDACTED]) was then transferred to the Appellant on his aunt's death together with a share of the residue of her estate.

Notices of Assessment to Capital Acquisitions Tax were originally made in 2019 in respect of taxable years 2006 to 2018. The Appellant made a voluntary disclosure dated 18 April 2023.

Subsequently, Notices of Amended Assessment dated 24 April 2023 were made in respect of taxable years 2006 to 2018. The Notices of Amended Assessment have sought to disallow the Appellant any relief to CAT relied upon by the Appellant pursuant to Section 82(2) CATCA 2003 and Section 86 CATCA 2003. Revenue issued a further letter dated 13 May 2023 in this matter.

The Appellant's representative, [REDACTED], has only recently been instructed in this matter and is only gradually becoming aware of the extent of the Appellant's medical condition in May 2023, subsequent to the issuance of the said Notices of Amended Assessment dated 24 April 2023 and the Revenue letter dated 13 May 2023.

This Notice of Appeal seeks to appeal the Notices of Amended Assessment dated 24 April 2023 in respect of taxable years 2006 to 2018 and the decision of Revenue by letter dated 13 May 2023. In light of the Appellant's incapacity, the Appellant relies upon the CAT exemptions pursuant to Section 82(2) CATCA 2003 and Section 86 CATCA 2003 in respect of gifts and inheritances received by the Appellant from his aunt, [REDACTED]."

20. On 26 June 2023 the Respondent advised the Commission that further to section 949L of the TCA 1997 it was objecting to the Commission accepting the Appellant's appeal. The Respondent submitted that the appeal was not a valid appeal as the Appellant was seeking to appeal against agreed amounts which was contrary to the provisions of section 959AI of the TCA 1997. Further the Respondent submitted that the appeal was not a valid appeal as the Appellant was seeking to appeal against assessments which were based without alteration on returns filed on behalf of the Appellant which was contrary to section 959AG of the TCA 1997. Further the Respondent submitted that the appeal was therefore not a valid appeal as it was not in compliance with the provisions of section 949J of the TCA 1997.
21. On 12 July 2023 the Agent advised the Commission inter alia that in 2019 Notices of Assessment to CAT were made for the years 2006-2018. The Agent further advised that on 24 April 2023 Notices of Amended Assessment were issued for the years 2006-2018. The Agent submitted that these "...*Notices of Amended Assessment have sought to*

disallow the Appellant any relief to CAT relied upon by the Appellant...” pursuant to section 82(2) of the CATCA 2003 and section 86 of the CATCA 2003 and that the Respondent had issued its letter of 13 May 2023 in this regard. The Agent further submitted that the Notice of Appeal seeks to appeal: a) the Notices of Amended Assessment dated 25 April 2023 for the years 2006-2018; and b) the decision made by the Respondent in its letter of 13 May 2023 “...on the basis of the Appellant’s incapacity”. The Agent concluded by further submitting that in light of the Appellant’s medical condition there were no agreed amounts and therefore section 959AL of the TCA 1997 does not apply.

22. On 9 August 2023 the Respondent submitted to the Commission inter alia that the Respondent had previously stated in its letter of 26 June 2023 that an appeal cannot be made against agreed amounts as set out in section 959AI of the TCA 1997. The Respondent referred to the Agent’s submission that the Agent “.....*did not provide a disclosure but “rather this disclosure was made solely by the Appellant. Furthermore, there was no agreement on my part or indeed on the Appellant’s part”*”. The Respondent submitted that this was contradictory to the tax returns filed up to 2017; the disclosure submitted by the Appellant up to 2017; and the agreement reached in the Meeting on 20 April 2023 for all periods up to 2018. The Respondent further submitted that the returns for the years 2006-2017 were not altered by the Respondent and that the return for 2018 was agreed by the Appellant and the Agent and that there can therefore be no appeal against same because of the provisions of section 959AI of the TCA 1997.
23. On 9 November 2023 the Agent submitted to the Commission inter alia that there was no agreement as to agreed amounts between the Appellant and the Respondent and that proof of there being no agreement was in the letter from the Respondent dated 13 May 2023. The Agent submitted that the said letter “...*indicates that there was considerable disagreement regarding the Appellant’s liability to CAT*”. The Agent further submitted that the appeal was a valid appeal in light of the grounds of appeal in the Notice of Appeal and their letter of 12 July 2023.
24. On 24 April 2024 the Agent submitted to the Commission inter alia that its letters of 12 July 2023 and 9 November 2023 “...*deal comprehensively with the Appellant’s right to appeal and his grounds of appeal*”. The Agent further submitted that the Respondent’s correspondence is “*predicated upon the mistaken belief that there was an agreement made in respect (...) the Appellant’s CAT liability on 20 April 2023. **There was no agreement on 20 April 2023 or at anytime.*** [emphasis used in Agent’s letter] The

Respondent's letter dated 13 May 2023 confirms that there was considerable disagreement regarding the Appellant's liability to CAT".

25. On 22 May 2024 the Commission wrote to the Agent and the Respondent seeking further and better particulars regarding their respective submissions.
26. On 19 June 2024 and 15 July 2024 the Respondent submitted to the Commission inter alia that it no longer had an objection to the appeal in respect of the year 2018 and that it was withdrawing its objection. The Respondent stated (in response to the Commission's enquiries in its letter dated 22 May 2024) that *"[T]he Respondent maintains its position that a settlement was agreed between the parties that the relief did not apply for the 2018 year of assessment at the meeting on 20 April 2023. It was on this basis that the Respondent issued an amended assessment withdrawing the relief. However, the Respondent accepts that there is a difference of opinion in relation to this agreement and the Appellant now disputes that such an agreement was made. On that basis we will withdraw our objection to the 2018 appeal."*
27. On 19 June 2024 and 15 July 2024 the Respondent submitted to the Commission inter alia that for the years 2006-2017 the Appellant sought to appeal his own tax returns which was not an appealable matter for the purposes of Part 40A of the TCA 1997. The Respondent further submitted that the CAT Notices of Amended Assessment dated 25 April 2023 and the relief claimed by the Appellant do not apply. The Respondent further submitted that for those reasons the Respondent objected to the Commission accepting the appeals for the years 2006-2017.
28. On 20 June 2024 the Agent submitted to the Commission inter alia that the Respondent's position is predicated upon the mistaken belief that there was an agreement made in respect of the Appellant's CAT liability at the Meeting on 20 April 2023 and that there was in fact no agreement at the Meeting on 20 April 2023 or at anytime. The Agent further submitted that the Appellant was not in a position to make an agreement on that day. The Agent further submitted that the Respondent's letter dated 13 May 2023 confirms that there was considerable disagreement regarding the Appellant's liability to CAT. The Agent further submitted that the Respondent's letter of 13 May 2023 (referred to in the letter as 19 May 2023) *"...was after the date of the alleged agreement of 25 April 2023 and further confirms that there was no agreement on 20 April 2023 or at anytime"*. The Agent further submitted that after the issue of the Notices of Amended Assessment by the Respondent the Agent then submitted the Notice of Appeal to the Commission on 24 May 2023 appealing the Notices of Amended Assessment dated 25 April 2023 and appealing the Revenue decision dated 13 May 2023.

29. On 21 June 2024 the Agent submitted to the Commission inter alia that it was the understanding of all parties that the Meeting on 20 April 2023 was an attempt to deal with the Appellant's "...entire CAT liabilities in the period from 2006 to date. There was never any suggestion on the part of the Respondent, until our receipt this morning (21 June 2024) of the Respondent's letter dated 19 June 2024 to TAC, that there was any difference in April 2023 between the CAT position [sic] for 2006 to 2017 and the CAT position [sic] for 2018."

"Regarding the issue of "voluntary disclosure", the voluntary disclosure was made as a matter of routine prior to the meeting of 20 April 2023 in an attempt to protect [the Appellant]. The meeting of 20 April 2023 dealt with [the Appellant's] entire CAT liabilities in the period from 2006 to date".

*"There was **no agreement to anything** at the meeting of 20 April 2023. This is clearly illustrated by the Respondent's letter dated 27 April 2023 ... which refers to an 'updated settlement offer following our meeting held on 20 April 2023', and is further supported by the Respondent's letter of 13 May 2023..."*

"Whilst there may have been an "offer" on the part of the Respondent, there was never an "acceptance" or any other components of a properly completed agreement in respect of [the Appellant's] CAT position".

"In light of the above and the Respondent's belated agreement to withdraw its objection to the 2018 appeal, we are of the view that the Respondent should now withdraw its objection to all aspects of the Notice of Appeal dated 24 May 2023".

"We therefore continue to hold our position that this is a valid appeal pursuant to the provisions of TCA 1997 and Section 6, Finance (Tax Appeals) Act 2015 for TAC to hear and determine."

30. On 27 June 2024 the Agent submitted to the Commission inter alia that section 959AI of the TCA 1997 is "...not relevant in circumstances where we have consistently indicated that our client.....has ongoing historicissues rendering him incapable of agreeing to CAT matters, now or at any time whether determined by the Respondent or otherwise..."
31. On 30 July 2024 the Agent submitted to the Commission inter alia that it noted that the Respondent had withdrawn its objection to the 2018 element of the Notice of Appeal dated 24 May 2023. The Agent further submitted that as already stated by them there was never any agreement, either by or on behalf of the Appellant to settling the Appellant's CAT issues at any stage. Further, the Agent submitted that as previously submitted by them, the understanding of all parties was that the Meeting on 20 April 2023

was an attempt to deal with the Appellant's entire CAT liabilities in the period from 2006 to date. The Agent further submitted that there was never any suggestion on the part of the Respondent, until the Respondent's letter dated 19 June 2024 to the Commission "...that there was any difference in April 2023 between the CAT position for 2006 to 2017 and the CAT position for 2018." The Agent further submitted that their position is still that "...the issues pertaining to the Notice of Appeal pertaining to 2006 to 2017 are the same as those pertaining to 2018, and furthermore are intrinsically linked". The Agent further submitted (as previously submitted by them) that in light of the Appellant's "...medical condition, it would be most appropriate that any...appeal be heard on paper by means of the exchange of documentation and written submissions rather than by way of an oral hearing".

Legislation

32. The Commissioner refers to the following legislation:

Section 949E of the TCA 1997: Directions:

- (1) *The Appeal Commissioners may, on their own initiative or on the application of a party, give a direction at any time to a party in relation to the conduct or disposal of an appeal, including a direction amending an earlier direction or suspending or setting aside its operation.*
- (2) *Without prejudice to the generality of subsection (1), the matters in relation to which the Appeal Commissioners may give a direction include—*
 - (a) *requiring a party to provide, to the Appeal Commissioners or to another party, documents, statements, accounts, returns, computations, explanations, particulars, records, certificates, declarations, schedules and such other items or information as they consider relevant to the adjudication of the matter under appeal,*
 - (b) *consolidating or hearing together 2 or more appeals raising common or related issues,*
 - (c) *staying proceedings,*
 - (d) *holding a preliminary hearing,*
 - (e) *adjourning a hearing, and*
 - (f) *extending the time within which a direction must be complied with.*

- (3) *In a case in which the giving by them of a direction is applied for by a party, such an application shall be made—*
- (a) *by sending, in writing, the application to the Appeal Commissioners, or*
- (b) *orally, during the course of a hearing or preliminary hearing,*
- and shall include the reason for seeking the direction.*
- (4) *A direction by the Appeal Commissioners may be given by them orally but, where this happens, the terms of the direction shall be reduced to writing as soon as practicable thereafter unless the Appeal Commissioners consider this to be unnecessary.*
- (5) *Where the Appeal Commissioners give a direction then, unless they consider that there is a good reason not to do so, they shall send a written notice of the direction to each party and to any other person affected by that direction.*
- (6) *A party who asserts that a direction ought not to have been given by the Appeal Commissioners or that a direction given by them should be amended shall apply to the Commissioners for a direction setting aside or suspending its operation or, as appropriate, amending it.*
- (7) *That application shall be made not later than 14 days after the date on which the party was notified of the first-mentioned direction in subsection (6).*
- (8) *Where the direction given is one requiring compliance with its terms, it shall specify a date by which these terms are to be complied with.*
- (9) *Where a direction requires the provision of such items or information as are referred to in subsection (2)(a), it may specify the format in which those items are to be provided.*
- (10) *A party to whom a direction is given shall comply with it.*
- (11) *Where a party applies in writing for a direction, the party shall, at the time of such application, send a copy of the application to the other party.*

Section 949I of the 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 949J of the TCA 1997: Valid appeal and references in this Part to acceptance of an appeal

- (1) For the purposes of this Part, an appeal shall be a valid appeal if—
 - (a) it is made in relation to an appealable matter, and
 - (b) any conditions that are required (by the provisions of the Acts relevant to the appeal concerned) to be satisfied, before an appeal may be made, are satisfied before it is made.
- (2) References in this Part to an appeal being accepted by the Appeal Commissioners shall be construed as references to their determining that, for the time being (on the facts and information then available to them)—
 - (a) the appeal is a valid appeal, and
 - (b) there are no grounds for their invoking section 949N(1)(c) as a basis for not proceeding as subsequently mentioned in this subsection,and, accordingly, that they should proceed to deal with the appeal.
- (3) However, any such determination of the Appeal Commissioners may be reversed by them as and when facts and information become available to them that, in their opinion, warrant that course of action.
- (4) Subsection (3) shall not affect the operation of section 949N(3) (provision with regard to finality of Appeal Commissioners' refusal to accept an appeal).

Section 949K of the TCA 1997: Notification of appeal to Revenue Commissioners

The Appeal Commissioners shall send a copy of each notice of appeal, and any item that was appended to the notice, to the Revenue Commissioners as soon as practicable after they have received them.

Section 949L of the TCA 1997: Objection by Revenue Commissioners

- (1) Where the Revenue Commissioners consider that—
 - (a) an appeal is not a valid appeal, or
 - (b) the appellant has not complied with the requirements of section 949O,they may send to the Appeal Commissioners a written notice of objection to the making of the appeal and that notice shall state the reason for their objection.

- (2) *Where the Revenue Commissioners do not send the notice referred to in subsection (1) to the Appeal Commissioners within 30 days after the date on which the Appeal Commissioners send the notice of appeal to them, the Appeal Commissioners shall not be required to have regard to the objection in deciding whether to accept an appeal.*
- (3) *Where the Revenue Commissioners send a notice of objection in accordance with subsection (1), the Appeal Commissioners shall notify such objection to the appellant.*

Section 949M of the TCA 1997: Acceptance of an appeal

Subject to sections 949N and 949O, the Appeal Commissioners shall accept an appeal after the end of the period referred to in section 949L(2) where they have no reason to believe that the appeal is not a valid appeal

Section 949N of the TCA 1997: Refusal to accept an appeal

- (1) *Where the Appeal Commissioners—*
 - (a) *are satisfied that an appeal is not a valid appeal,*
 - (b) *become aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or*
 - (c) *are satisfied that an appeal is without substance or foundation,**they shall refuse to accept the appeal.*
- (2) *Where the Appeal Commissioners refuse to accept an appeal, they shall notify the parties in writing accordingly stating the reason for the refusal.*
- (3) *Where, in respect of a refusal on their part to accept an appeal, the Appeal Commissioners declare that their decision in that regard is final, then that decision shall be final and conclusive.*
- (4) *For the avoidance of doubt—*
 - (a) *references in the preceding subsections to the Appeal Commissioners' refusing to accept an appeal include references to a member or members of staff of the Commission, pursuant to an authority granted under section 5(2) of the Finance (Tax Appeals) Act 2015, refusing to accept an appeal, and*

- (b) *the Appeal Commissioners may make a declaration under subsection (3) in respect of a foregoing refusal by a member or members of staff to accept an appeal as they may make such a declaration in respect of such a refusal on their part.*

Section 959A of the TCA 1997: Part 41A: Assessing Rules Including Rules for Self Assessment inter alia provides

In this Part, except where the context otherwise requires—

“Acts” means—

- (a) *the Income Tax Acts,*
- (b) *the Corporation Tax Acts,*
- (c) *the Capital Gains Tax Acts,*
- (ca) *Part 18A,*
- (d) *Part 18C,*
- (e) *Part 18D,*

and any instruments made under any of those Acts or Parts;

“amount of tax chargeable”, in relation to a person and an Act, means the amount of tax chargeable on the person under the Act after taking into account—

- (a) *each allowance, deduction or relief that is authorised by the Act to be given to the person against income, profits or gains or, as applicable, chargeable gains, and*
- (b) *in the case of an individual to whom Chapter 2A of Part 15 applies, any increase in the taxable income of the individual by virtue of that Chapter;*

“amount of tax payable”, in relation to a person and an Act, means the amount of tax payable by the person after reducing the amount of tax chargeable on the person under the Act by the amount of any tax credit that is authorised by the Act in relation to that person;

“assessment”, other than in section 959G, means an assessment to tax that is made under the Acts and, unless the context otherwise requires, includes a self assessment;

“chargeable gain” has the same meaning as in section 545(3);

“chargeable period” means an accounting period of a company or a tax year;

“chargeable person” means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person’s own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates;

“return” means the return which is required to be prepared and delivered in accordance with Chapter 3;

“Revenue assessment” shall be construed in accordance with section 959C;

“self assessment” means an assessment to tax made by a chargeable person, or in relation to a chargeable person, in accordance with Chapter 4;

“tax”, other than in section 959G, means any income tax, corporation tax, capital gains tax or any other levy or charge which under the Acts is placed under the care and management of the Revenue Commissioners;

“tax year” means a year of assessment.

Section 959AF of the TCA 1997: Appeals in relation to assessments

(1) Subject to subsection (1A), a person aggrieved by an assessment or an amended assessment, as the case may be, made on that person may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment.

(1A) No appeal lies against an assessment or an amended assessment where the sole matter on which the person, on whom the assessment or amended assessment, as the case may be, was made, is aggrieved relates to a surcharge imposed under section 1084(2), other than where that person’s ground for the appeal relates to—

- (a) a matter referred to in section 1084(1)(b),*
- (b) the date on which the return of income for a chargeable period was delivered, or*
- (c) the compliance by that person, on or before the specified return date for the chargeable period, with a requirement—*
 - (i) to prepare and deliver a return under Part 7 of the Finance (Local Property Tax) Act 2012, or*

- (ii) *to pay any local property tax payable under that Act.*
- (2) *Where a person is aggrieved by the making of an assessment or the amendment of an assessment (being an assessment made on that person) on the grounds that the person considers that the person who made the assessment or who amended the assessment was precluded from so doing—*
- (a) *in the case of a chargeable person, by reason of section 959AA, 959AC or 959AD, or*
- (b) *in the case of a person other than a chargeable person, by reason of section 959AB or 959AD,*
- those grounds may be stated in the notice of appeal for the purpose of section 949I(2)(d).*
- (3) *Subject to section 959AW, in default of an appeal, in accordance with section 949I, being made by a person to whom a notice of assessment has been given, the assessment made on the person shall be final and conclusive.*
- (4) *Notwithstanding section 129(4) of the Finance Act 2012, subsection (1) shall apply to an assessment or an amended assessment, as the case may be, made on a person for a chargeable period, that is an accounting period of a company, that starts before 1 January 2013 or for any year of assessment preceding 2013.*

Section 959AG of the TCA 1997: Chargeable persons: no appeal against self assessment

No appeal may be made against—

- (a) *a self assessment made under section 959R, section 959T or section 959U,*
- (b) *a self assessment amended under section 959V,*
- (c) *the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in such an assessment.*

Section 959AI, of the TCA 1997: Chargeable persons and other persons: no appeal against agreed amounts

No appeal may be made against the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in an assessment or an amended assessment made on a person for a chargeable period where either—

- (a) a Revenue officer has determined the amount by accepting without alteration of and without departing from the statement or statements, or the particular or particulars with regard to income, profits or gains or, as the case may be, chargeable gains, or allowances, deductions, reliefs or tax credits specified in the return delivered by the person for the chargeable period, or
- (b) the amount has been agreed between the Revenue officer and the person, or any person authorised by the person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

Section 6, Finance (Tax Appeals) Act 2015, as amended: Functions of Commissioners

- (1) The Commissioners may perform such functions as are assigned to them by this Act and by the Taxation Acts.
- (2) Without prejudice to the generality of subsection (1), the Commissioners shall perform the following functions in relation to the Taxation Acts—
 - (a) deciding whether or not to accept an appeal,
 - (b) deciding whether to declare, under section 949N(3) (inserted by section 34) of the Act of 1997, that a refusal to accept an appeal is final,
 - (c) deciding on the appropriate procedure to be adopted in relation to an adjudication of an appeal,
 - (d) giving directions to the parties to an appeal,
 - (e) fixing dates, times and places for the hearing of appeals,
 - (f) hearing an appeal where the Commissioners have decided that a hearing is the appropriate method of adjudicating on the appeal,
 - (g) determining appeals,

- (h) *providing written determinations,*
 - (i) *publishing determinations,*
 - (j) *stating and signing cases stated for the opinion of the High Court, and*
 - (l) *doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants.*
- (3) *References in subsection (2) to accepting an appeal shall be read in accordance with Chapter 2 of Part 40A (inserted by section 34) of the Act of 1997.*
- (4) *The Commissioners shall perform their functions in a manner that has regard to the need for proceedings before the Commissioners—*
- (a) *to be accessible and fair, and*
 - (b) *to be conducted as expeditiously as possible.*
- (5) *The Commissioners may adopt rules of procedure with respect to any of their functions and shall publish any rules so adopted.*

Section 82(2) of the CATCA 2003: Exemption of certain receipts.

- (2) *Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponent of money or money's worth—*
- (a) *by—*
 - (...)
 - (b) *by a person who is in relation to the disponent a dependent relative under section 466 of the Taxes Consolidation Act 1997, for support or maintenance,*
- is not a gift or an inheritance, where the provision of such support, maintenance or education, or such support or maintenance—*
- (i) *is such as would be part of the normal expenditure of a person in the circumstances of the disponent, and*
 - (ii) *is reasonable having regard to the financial circumstances of the disponent.*

Section 86 of the CATCA 2003: Exemption relating to certain dwellings:

(1) In this section—

“dwelling house” means—

- (a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and
- (b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;

“relevant period”, in relation to a relevant dwelling house comprised in an inheritance, means the period of 6 years commencing on the date of the inheritance;

“successor” includes a transferee under an inheritance referred to in section 32(2).

(2) In this section a “relevant dwelling house”, in relation to a disponent or a successor, as the case may be, is a dwelling house that —

- (a) was occupied by the disponent as his or her only or main residence at the date of his or her death, and
- (b) was continuously occupied by the successor as his or her only or main residence
 - (i) throughout the period of 3 years immediately preceding the date of the inheritance, or
 - (ii) where the dwelling house replaced another dwelling house as that successor’s only or main residence, the first-mentioned dwelling house and the dwelling house that was replaced as that successor’s only or main residence, for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the inheritance,

(2A) For the purposes of subsection (4A), a successor is deemed to be beneficially entitled to, or to have a beneficial interest in, a dwelling house that is subject to

a discretionary trust under or in consequence of a disposition made by the successor where that successor is an object of the trust.

(3) *For the purpose of subsection (2), a disposer or a successor, as the case may be, is deemed to occupy a dwelling house for a period during which he or she ceases to occupy that dwelling house in consequence of his or her mental or physical infirmity.*

(4) *Subject to subsections (4A), (4B), (5) and (6), a relevant dwelling house is exempt from tax in relation to the inheritance by the successor of the dwelling house and the value of the dwelling house shall not be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house.*

(4A) *For the purposes of subsection (4), and in relation to a disposer and a successor—*

(a) *a dwelling house shall not be regarded as a relevant dwelling house where the successor is beneficially entitled to, or has a beneficial interest in, any other dwelling house—*

(i) *at the date of the inheritance of the first-mentioned dwelling house in this paragraph (a), or*

(ii) *at the valuation date of the first-mentioned dwelling house in this paragraph (a), if this date is later than that date of inheritance and such entitlement to, or interest in, that dwelling house is taken from the disposer,*

and

(b) *where—*

(i) *a dwelling house to which the successor is beneficially entitled, or in which the successor has a beneficial interest, is regarded as a relevant dwelling house, and*

(ii) *that successor acquires a subsequent beneficial entitlement to or a beneficial interest in any other dwelling house by way of an inheritance taken from the disposer,*

the first-mentioned dwelling house in this paragraph (b) shall cease to be regarded as a relevant dwelling house on the date on which that

subsequent entitlement or interest is acquired.

(4B) Where paragraph (b) of subsection (4A) applies—

- (a) subparagraphs (i) and (ii) of subsection (6) shall apply as if the dwelling house had not been a relevant dwelling house at the date of the inheritance, and*
- (b) the relevant date (within the meaning of section 46(5)) from which interest is to be charged in accordance with section 51(2) shall be the earliest valuation date for any other dwelling house to which the successor takes a beneficial entitlement or in which the successor takes a beneficial interest from the disponent if that date is later than the date which, apart from this subsection, would be the relevant date.*

(5) For the purposes of subsection (4), a dwelling house shall not be regarded as a relevant dwelling house where it is taken —

- (a) by way of a gift, or*
- (b) under a disposition referred to in paragraph (c) of section 3(1),*
unless it is taken by a dependant relative under subsection (9).

(6) Subject to subsection (7), a dwelling house shall cease to be regarded as a relevant dwelling house where —

- (a) the dwelling house is sold or disposed of (either in whole or in part) within the relevant period and before the death of a successor, or*
- (b) a successor ceases to occupy the dwelling house as his or her only or main residence during the relevant period,*

and, as a consequence of such sale, disposal or cessation —

- (i) tax shall be chargeable in relation to the inheritance by the successor of the dwelling house, and*
- (ii) the value of the dwelling house shall be taken into account in computing tax on any gift or inheritance taken by a successor who takes an inheritance of the relevant dwelling house,*

as if that dwelling house had not been a relevant dwelling house at the date of the inheritance.

(7)(a) Notwithstanding subsection (6), a dwelling house shall not cease to be regarded as a relevant dwelling house where —

- (i) the entirety of the consideration for the sale or disposal of the dwelling house (in this subsection and in subsection (8) referred to as the “inherited dwelling house”) is used by a successor to acquire a dwelling house to replace the inherited dwelling house as the successor’s only or main residence (in this subsection and in subsection (8) referred to as the “replacement dwelling house”), the period of occupation of which as the successor’s only or main residence, when added to the period of occupation of the inherited dwelling house as his or her only or main residence, amounts to an aggregate period comprising at least 6 years falling within the period of 7 years commencing on the date of the inheritance,*
- (ii) a successor is of the age of 65 years or over at the date of the inheritance of the dwelling house,*
- (iii) a successor ceases to occupy the dwelling house in consequence of his or her mental or physical infirmity (which infirmity is certified by a registered medical practitioner who is registered in the register established under section 43 of the Medical Practitioners Act 2007), whether or not the dwelling house is sold or disposed of, or*
- (iv) a successor is required to be absent from the dwelling house in consequence of any condition imposed by his or her employer requiring the successor to reside elsewhere for the purposes of performing the duties of his or her employment.*

(b) Subparagraphs (iii) and (iv) of paragraph (a) shall apply to a replacement dwelling house, as they apply to a relevant dwelling house.

(8) Where the consideration for the sale or disposal of an inherited dwelling house, or a replacement dwelling house, as the case may be, (in this subsection referred to as the “sold dwelling house”) exceeds the consideration for the acquisition of any replacement dwelling house (in this subsection referred to as the “acquired dwelling house”) acquired as a replacement for the sold dwelling house, then the value of the sold dwelling house which is chargeable to tax

under subsection (6) shall be reduced in the same proportion as the consideration for the acquired dwelling house bears to the consideration for the sold dwelling house.

(9) (a) *In this subsection —*

“relative”, in relation to the disponent, or to the spouse or civil partner of the disponent, as the case may be, means lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew;

“dependent relative” means a relative who is —

(i) *permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself, or*

(ii) *of the age of 65 years or over.*

(b) *For the purposes of this section, a dependent relative who takes a gift of a dwelling house shall be deemed to take the dwelling house as an inheritance on the date of the gift.*

(c) *Where a dependent relative takes a gift or inheritance of a dwelling house, paragraph (a) of subsection (2) shall not apply for the purposes of determining whether the dwelling house is a relevant dwelling house.*

Submissions

The Appellant’s submissions

33. The Appellant submits that:

- 33.1. the Appellant is entitled to bring his appeal to the Commission and the Commission is obliged to accept the appeal owing to the circumstances of the case, the circumstances that apply to the Appellant and the potential quantum of tax and penalties; and
- 33.2. the appeal is a valid appeal as per the Grounds of Appeal in the Notice of Appeal and in light of the information provided in Agent’s letter to the Commission dated 12 July 2023 and other correspondence; and
- 33.3. the Commission is required to determine the tax appeal in accordance with the provisions of Section 6 of the Finance (Tax Appeals) Act 2015, as amended and in particular, Section 6(2) of the Finance (Tax Appeals) Act 2015; and

Appellant's part regarding the Appellant's CAT position. The "voluntary disclosure" letter was made as a matter of routine prior to the Meeting on 20 April 2023 in an attempt to protect the Appellant. The Meeting on 20 April 2023 dealt with the Appellant's entire CAT liabilities in the period from 2006 to date; and

- 33.13. the Respondent's correspondence about the appeal and all matters pertaining to it is predicated upon the mistaken belief that there was an agreement made in respect the Appellant's CAT liability at the Meeting on 20 April 2023. That is not the position and the Respondent's letter dated 13 May 2023 which was after the Meeting on 20 April 2023 confirms that there was considerable disagreement between the parties regarding the Appellant's liability to CAT; and
- 33.14. the Respondent's letter of 13 May 2023 is not indicative of any agreement but rather it is indicative of continuing debate, using phraseology such as "[U]nless a signed settlement offer is received" and that whilst there may have been an "offer" on the part of the Respondent, there was never an "acceptance" or any other components of a properly completed agreement in respect of the Appellant's CAT position; and
- 33.15. in light of the Respondent's belated agreement to withdraw its objection to the 2018 appeal, it is submitted that the Respondent should now also withdraw its objection to all aspects of the Notice of Appeal dated 24 May 2023 for the period 2006-2017.

The Respondent's submissions

34. The Respondent submits that the application of section 959AI of the TCA 1997 is mandatory and that there is no discretion to admit an appeal which falls within its parameters and that there can be no appeal against agreed amounts:

"No appeal may be made against the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in an assessment or an amended assessment made on a person for a chargeable period where either –

(a) Revenue officer has determined the amount by accepting without alteration of and without departing from the statement or statements, or the particular or particulars with regard to income, profits or gains or, as the case Page 2 of 8 may be, chargeable gains, or allowances, deductions, reliefs or tax credits specified in the return delivered by the person for the chargeable period, or

(b) the amount has been agreed between the Revenue officer and the person, or any person authorised by the person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

35. The Respondent submits that on 13 April 2023, prior to the scheduled Meeting on 20 April 2023, CAT Returns for all periods 2006 to 2018 were filed electronically by the Agent. The Respondent submits that on 29 April 2024 the Respondent's IT department confirmed that the CAT returns for the period 2006-2018 were filed on 13 April 2023 by the Agent using their TAIN.
36. The Respondent further submits that at the Meeting on 20 April 2023, the Agent provided the Respondent with a signed disclosure dated 18 April 2023 for CAT periods 2006 to 2018. The Respondent further submits that all CAT returns filed by the Agent on 13 April 2023 covering periods 2006 to 2018 matched the disclosure dated 18 April 2023 which was submitted at the Meeting on 20 April 2023. The Respondent further submits that in the disclosure and in the CAT returns submitted by the Appellant/Agent for the period 2006-2017 no exemptions were claimed. The Respondent further submits that the Agent is incorrect therefore to state that the Respondent is disallowing an exemption for these periods, as the Respondent submits no exemption was ever claimed by the Appellant/Agent in the filed returns for the period 2006-2017.
37. The Respondent further submits that a claim for incapacitated person exemption ("IPE") was included in both the CAT return and the disclosure for the year 2018. The Respondent further submits that during the Meeting on 20 April 2023, it was agreed with both the Agent and the Appellant and the Respondent that IPE would not apply to the year 2018. The Respondent further submits that based on this agreement, the 2018 CAT return was amended by the Respondent to reflect the agreed position.
38. The Respondent further submits that it more recently accepts that there is a difference of opinion in relation to the events of the Meeting on 20 April 2023 and in its letter of 19 June 2024 the Respondent states that *"[O]n that basis, the Respondent withdraws its objection to the 2018 appeal and the 2018 appeal should now proceed and that the appeals for 2006-2017 are not valid appeals"*.
39. The Respondent further submits that the liability as set out in the disclosure for the period 2006 to 2017 matched the returns which were filed by the Agent on 13 April 2023 for the same period and that no exemption as to CAT was claimed in the returns filed on behalf of the Appellant for these periods (2006-2017). The Respondent further submits that as CAT Notices of Assessment had already issued in 2019 for the period 2006-2017, assessments did not issue for this same period until 25 April 2023 when the Notices of

Amended Assessment for the period 2006 to 2017 issued to the Appellant without alteration from the returns filed by the Agent on 13 April 2023. The Respondent further submits that the Appellant seeks to appeal his own tax returns and that is not an appealable matter for the purposes of Part 40A of the TCA 1997.

40. A summary of the Respondent's submissions are that:

- 40.1. the Respondent continues to object to the Commission accepting the appeal in respect of the Notices of Amended Assessment for the period 2006-2017 (inclusive); and
- 40.2. the Respondent does not object to the Commission accepting the appeal in respect of the Notice of Amended Assessment for the year 2018.

Material Facts

41. The Commissioner has assessed all of the material submitted to the Commission and finds that the material facts are as follows:

- 41.1. On 29 May 2019 the Respondent raised Notices of Assessment for CAT for the Appellant for the years 2006-2017.
- 41.2. On 7 June 2019 the Respondent raised a Notice of Assessment for CAT for the Appellant for the year 2018.
- 41.3. On 7 February 2022 the Agent registered as acting for the Appellant with the Respondent.
- 41.4. On 13 April 2023 the Agent using their TAIN filed tax returns for CAT online with the Respondent for the period 2006-2018.
- 41.5. On 18 April 2023 the Appellant submitted a disclosure to the Respondent for the period 2006-2018.
- 41.6. On 20 April 2023 the Appellant, the Agent and representatives of the Respondent attended a meeting ("Meeting on 20 April 2023").
- 41.7. On 25 April 2023 the Respondent issued Notices of Amended Assessment for the years 2006-2018.
- 41.8. On 13 May 2023 the Respondent inter alia advised the Agent that unless a signed settlement offer was received by close of business 19 May 2023 to include a full proposal for settlement of the outstanding liabilities then the matter would be referred for enforcement and that a Notice of Opinion would thereafter issue.

- 41.9. On 24 May 2023 the Appellant issued a Notice of Appeal appealing the Notices of Amended Assessment dated 25 April 2023 in respect of taxable years 2006 to 2018 and the decision of the Respondent in its letter dated 13 May 2023 in light of the Appellant's incapacity.
- 41.10. On 19 June 2024 the Respondent withdrew its objection to the Appellant's appeal in respect of the Notice of Amended Assessment for the year 2018.

Analysis

42. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.
43. Section 949A of the TCA 1997 defines an "*appealable matter*" as "*any matter in respect of which an appeal is authorised by the Acts*". Section 949J of the TCA 1997 states that an appeal shall be valid if "*it is made in relation to an appealable matter*". Therefore, in order for an appeal to be valid, it must be a matter in respect of which an appeal is authorised by the Tax Acts. The Commission does not have a general or residual power to hear appeals into matters where no appeal is authorised by the Tax Acts.
44. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:
- "The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation".*
45. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:
- " Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...".*

46. Moreover, more recently in the decision of *Colm Murphy v the Revenue Commissioners*, [2023] IECA 160 Haughton J., applied the principles enunciated by Murray J. in *Lee* and at paragraph 55 stated that:

“Further, for the reasons elaborated by Murray J. in Lee, it also follows that any argument that the appellant might wish to advance in respect of “procedural unfairness” (or, as it appears to have been raised in the Circuit Court, of estoppel based on the same facts) by reason of the absence of formal confirmation for the Regional Office of the ending of the enquiry and resumption of the audit, was not one which the Appeal Commissioners had jurisdiction to determine.”

47. It follows from the above that for an appeal to be a valid appeal that may be accepted by the Commissioner, there must exist some provision in legislation conferring on a taxpayer the right to appeal a specific decision to the Commission.
48. All material submitted to the Commission has been assessed by the Commissioner before making this determination.

Notices of Amended Assessment for the Years 2006 – 2017

49. Section 959AG of the TCA 1997 provides that there can be no appeal made against self assessment:

No appeal may be made against—

(a) a self assessment made under section 959R, section 959T or section 959U,

(b) a self assessment amended under section 959V,

(c) the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in such an assessment.

50. Section 959AI of the TCA 1997 provides:

No appeal may be made against the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in an assessment or an amended assessment made on a person for a chargeable period where either—

(a) a Revenue officer has determined the amount by accepting without alteration of and without departing from the statement or statements, or the particular or particulars with regard to income, profits or gains or, as the case may be, chargeable gains, or

allowances, deductions, reliefs or tax credits specified in the return delivered by the person for the chargeable period, or

(b) the amount has been agreed between the Revenue officer and the person, or any person authorised by the person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

51. The Commissioner has assessed the material facts of the case and the provisions of sections 959AG and 959AI of the TCA 1997 and finds that an appeal by a chargeable person against self assessment and an appeal by a chargeable person against agreed amounts are **not** matters which can be appealed to the Commission as (an) appealable matter(s). As stated above, the Commission is a creature of statute and the Commission is only entitled to consider appeals as set out in the Tax Acts. The Appellant's health and related issues are not matters that the Commission has the statutory powers to assess with respect to any self assessment or any assessment that was raised by the Respondent. The Commission is entitled to consider that any assessment issued by the Respondent is valid and the Commission has no statutory jurisdiction to question the validity of that assessment. This was confirmed by the High Court in *J.S.S, J.S J., T. S., D. S. and .P S. v a Tax Appeals Commissioner* [2024] IEHC 565.
52. The Commissioner notes that on 13 April 2023 the Agent using their TAIN filed tax returns for CAT online with the Respondent for the period 2006-2018 and that on 18 April 2023 the Appellant submitted a disclosure to the Respondent for the period 2006-2018. The Commissioner finds therefore that there can be no appeal by the Appellant to the Commission against self assessment under the provisions of Part 40A of the TCA 1997 and that the appeal made in respect of the Notices of Amended Assessment for the years 2006-2017 is accordingly not a valid appeal.

Notice of Amended Assessment for the Year 2018

53. The Commissioner notes the Respondent withdrew its objection to the appeal in respect of the Notice of Amended Assessment for the year 2018. Accordingly, no further analysis by the Commissioner is required in relation thereto for the purposes of this Decision. The appeal with respect to the Notice of Amended Assessment for the year 2018 shall proceed.

Decision

54. Section 949N(1) of the TCA 1997 stipulates in mandatory terms that where an Appeal Commissioner is satisfied that an appeal is invalid, they "*shall refuse to accept the appeal*".

55. The Commissioner being satisfied for the reasons set out in the preceding paragraphs that the Appellant's appeal in respect of the Notices of Amended Assessment for the years 2006-2017 is invalid, is therefore bound by statutory obligation to refuse acceptance of the appeals regarding the Notices of Amended Assessments for the years 2006-2017.
56. This decision to refuse to accept the Appellant's appeal regarding the Notices of Amended Assessments for the years 2006-2017 is final and conclusive and is issued in accordance with section 949N of the TCA 1997.
57. The appeal with respect to the Notice of Amended Assessment for the year 2018 shall proceed.
58. It is incumbent on the Commissioner to inform the Appellant that he has the right to challenge the decision by way of judicial review proceedings in the High Court. The Commission cannot provide advice to the Appellant in respect of same, and the Commission would recommend to any party that they seek independent legal advice.
59. It is also incumbent on the Commissioner to inform all parties that the Commission will defend any application for judicial review against any of its decisions, and in the event that the Commission is successful in such defence, it has a policy of seeking to recover its costs from the unsuccessful party.



Leonora B. Doyle
Appeal Commissioner
17 October 2024