



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

238TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) against assessments to Capital Acquisitions Tax (“CAT”) raised by the Revenue Commissioners (“the Respondent”) for the tax years 1 September 2011 – 31 August 2012 (“2012”), 1 September 2012 – 31 August 2013 (“2013”), 1 September 2013 – 31 August 2014 (“2014”) and 1 September 2014 – 31 August 2015 (“2015”).
2. The appeal proceeded by way of an oral hearing on 18 February 2025. The Appellant was represented by her agent (“the Appellant’s representative”) and the Respondent was represented by Junior Counsel (“counsel for the Respondent”).

Background

3. On 25 November 2019, the Respondent raised assessments to CAT as below (“the assessments”). The surcharges are not under appeal in this matter.

Year	CAT	Surcharge	Total Liability
2012	€29,698	€2,969	€32,668
2013	€19,494	€1,949	€21,443
2014	€25,291	€2,529	€27,820
2015	€100,002	€10,000	€110,002
Total	€174,485	€17,447	€191,933

4. On 18 December 2019, the Appellant submitted a Notice of Appeal to the Commission. On 14 August 2020, the Respondent submitted a Statement of Case and on 17 August 2020, the Appellant submitted a Statement of Case. On 31 August 2021, the Appellant submitted pre-hearing information and on 1 September 2021, the Respondent submitted pre-hearing information. On 28 September 2022, the Respondent submitted an Outline of Arguments. On 10 October 2022, the Respondent submitted books of documents, which included a book of documents submitted by the Appellant. On 30 November 2023, the Respondent submitted a supplemental Outline of Arguments. The Appellant submitted additional documents on the day of the hearing on 18 February 2025. The

Commissioner has considered all of the documentation submitted by the parties in this appeal.

5. This appeal was initially scheduled for hearing on 11 October 2022, when it was part-heard remotely and terminated on the same date due to connectivity issues. The appeal was rescheduled for hearing on 27 October 2022 and was then adjourned until 20 February 2023, [REDACTED]. The Appellant subsequently sought, and was granted, three further adjournments of hearings scheduled for 20 February 2023, 6 December 2023, and 6 March 2024. The hearing of this appeal was then rescheduled for 18 February 2025.
6. On 11 February 2025, the Commission notified both parties that for administrative reasons, the appeal had been reassigned to another Commissioner and in light of the passage of time, the Commissioner intended to commence the hearing afresh, if the parties had no objection to the appeal being reassigned. Neither party objected to this proposed course of action.
7. On the same date, the Appellant applied for a further adjournment. On 12 February 2025, the Commissioner refused the application, having particular regard to the fact that the appeal had been instigated in 2019, the history of adjournments, and the Commissioner's duty to perform her functions in a manner that has regard to the need for proceedings to be conducted as expeditiously as possible, under section 6 of the Finance (Tax Appeals) Act 2015.
8. On 18 February 2025, an oral hearing was held in private. On the morning of the hearing, the Appellant applied for an adjournment. The Commissioner refused an adjournment of the hearing insofar as it concerned the Appellant.¹ In refusing to grant the adjournment sought, the Commissioner was particularly mindful of the history of the appeal and considered that it was in the interests of justice for the hearing to proceed.
9. Before proceeding further with this Determination, it is necessary to explain the use of certain terms in this Determination. The Respondent assessed the Appellant's liability to CAT on the basis of two sources of money which the Respondent had identified in the course of an audit. The Respondent described these as "confirmed cash withdrawals" and "unconfirmed cash withdrawals". The "confirmed cash withdrawals" were amounts of money which the Respondent identified as having been received by the Appellant [REDACTED]. The "unconfirmed cash withdrawals" were amounts of money which the

¹ [REDACTED]
[REDACTED]

Respondent identified as having been withdrawn from the bank accounts of [REDACTED]. For ease of reference, the Commissioner will adopt the terms “confirmed cash withdrawals” and “unconfirmed cash withdrawals”. The Appellant submitted that the assessments should be reduced to reflect the fact that certain amounts of money, she said, were used to discharge expenses of the family business. The Appellant also submitted that the assessments should be reduced to reflect the fact that certain amounts of money, she said, were received as fees for representing her family [REDACTED]. These were described respectively as “business expenses” and “consultancy fees”. The Commissioner will also adopt these terms.

10. [REDACTED]
[REDACTED] The Commissioner wishes to acknowledge this and reiterate her thanks to the Appellant for her attendance at, and participation in, the hearing.

Legislation

11. Section 2(1) of the Capital Acquisitions Tax Consolidation Act 2003 (“the CATCA 2003”) provides (among other things):

“ “benefit” includes any estate, interest, income or right;

“donee” means a person who takes a gift;”

12. Section 4 of the CATCA 2003 provides:

“A capital acquisitions tax, to be called gift tax and to be computed in accordance with this Act, shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable gift taken by a donee.”

13. Section 5(1) of the CATCA 2003 provides:

“For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than 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.”

Evidence

Appellant's Evidence

14. The Appellant read into evidence a letter which she wrote to the Commission on 31 July 2020, and stated:

[REDACTED]

15. The Appellant stated that she received a loan in the amount of €225,000 [REDACTED] and this was confirmed in a letter [REDACTED]. [REDACTED] The Appellant relayed that it was an oversight that the probate form [REDACTED] did not initially include the loan. The Appellant referred [REDACTED], saying that she could not cope with it. She agreed with the Appellant's representative that she had repaid the amount of €32,000 [REDACTED].
16. The Appellant agreed with the Appellant's representative that the business expenses amounted to €76,000, €18,000 of which was in respect of the Non Principal Private Residence charge ("the NPPR") for properties [REDACTED] owned by the Appellant, [REDACTED]. The Appellant relayed that she was the point of contact for the

family business. She stated in relation to the invoice at page 18 of the Appellant's Book of Documents that: [REDACTED]

[REDACTED]. In relation to the invoice at page 21, she stated that: "Yes, *that's correct*" in answer to a question from her representative: "*Page 21, a tax report* [REDACTED]. She agreed with the Appellant's representative that pages 23 and 26 referred to solicitor's work relating [REDACTED]; and the NPPR (at pages 29 – 45) related to properties [REDACTED] owned by the Appellant, [REDACTED]

17. The Appellant stated that she did not receive the unconfirmed cash withdrawals. She agreed with the Appellant's representative that the Respondent did not identify any of the unconfirmed cash withdrawals being lodged into her bank account. She stated that she did not know if the Respondent had sought the bank accounts [REDACTED]. She denied that the unconfirmed cash withdrawals were used towards the Appellant's house. [REDACTED]

[REDACTED] The Appellant denied that there had been a change in her lifestyle or new assets purchased, to reflect receipt of the unconfirmed cash withdrawals. [REDACTED]

18. In cross-examination, the Appellant agreed that she received the confirmed cash withdrawals. She accepted that in 2011/2012, [REDACTED] gave her an amount of €70,000, which she then gave to her husband. She agreed that in 2015, she received the amount of €200,000 [REDACTED]. It was put to the Appellant that there was no question of repayment arising at that point. The Appellant did not disagree but stated that: "*We were quite young as well in the circumstances so that we would be able to, you know, make*

repayments". She later added that she and [REDACTED] had agreed that the Appellant would make repayments as best she could. [REDACTED]
[REDACTED]
[REDACTED]

19. When it was put to the Appellant that there were no contemporaneous documents recording the transfers of money and no emails, texts, or anything witnessed by a solicitor, she said: *"Nothing formal in place. We would have had conversations among ourselves but nothing formal"* and when Counsel asked: *"nothing in writing either"*, the Appellant stated: *"no"*. When the Appellant was asked whether the letter [REDACTED] [REDACTED] was the first written record claiming that the monies were a loan, the Appellant agreed: *"The first written record, yes"*.
20. The Appellant agreed that [REDACTED], she was made a director of the family business and gave personal guarantees. She agreed that the family had entered into a settlement agreement with the banks [REDACTED]. It was put to her that until her family entered into that agreement, the bank could have pursued everything she owned for personal guarantees, and in theory she was liable to the banks [REDACTED]. In response, the Appellant stated that she had hoped the banks would not do that. When asked again, she agreed that she was so liable. She agreed that the settlement agreement provided that €150,000 from the proceeds of a property sale was to be given to the Appellant, [REDACTED]. She accepted that [REDACTED] was when the repayment amount of €150,000 first arose and relayed that her family had been negotiating the settlement agreement before then. She stated that she repaid €20,000 [REDACTED] [REDACTED] in June 2022 and made small payments in 2018 and 2019. She accepted that as executrix [REDACTED], she should have included the loan [REDACTED] as a debt to the estate in the probate form, but did not do so. She agreed that she completed the probate form with legal assistance. She agreed that she included the amount of €150,000 in respect of the properties [REDACTED] and confirmed that those properties had not sold. The Appellant [REDACTED] said she was not thinking straight and did her best. She testified that the probate form was amended to include the loan the week before the hearing of this appeal.
21. The Appellant agreed that the tax report referred to at page 21 of the Appellant's Book of Documents related to property loans [REDACTED] [REDACTED]. Regarding the invoice at page 18 of the Appellant's Book of Documents, the Appellant stated that: *"I'm not sure about this one definitely [REDACTED] [REDACTED], I don't*

believe that this is personally for me. I was the point of contact [REDACTED]
[REDACTED]. When counsel for the Respondent then put it to the Appellant that she had no supporting documentation, the Appellant stated: “*Yeah, I don’t, because they no longer act for us anymore*”. The Appellant stated that the properties related to the NPPR bill were [REDACTED]. She agreed that [REDACTED] [REDACTED] were her properties.

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. The Appellant stated that she did not know where the unconfirmed cash withdrawals were. She said that [REDACTED] had submitted a handwritten letter about the unconfirmed cash withdrawals to her representative. When asked if as executrix of the will she had spoken to [REDACTED] to track the money down, she said that she had not. It was put to the Appellant by counsel for the Respondent that she had a reasonable lifestyle [REDACTED]
[REDACTED]. In response, the Appellant asked what was meant by a reasonable lifestyle. When asked whether she or her husband or her daughters received any of the unconfirmed cash withdrawals, she repeatedly stated “no”.

23. In response to a request from the Commissioner to tell her about the loan, the Appellant stated that she asked [REDACTED] [REDACTED]. The Appellant said [REDACTED] [REDACTED] that when the properties [REDACTED] were sold, there would be payments of €50,000 to the Appellant, [REDACTED]. She offered a personal guarantee [REDACTED] no security materialised. The Appellant agreed that this was “*all oral yeah, all verbal, yeah*”. In reply to a request from the Commissioner to point to documentary evidence of the repayments by the Appellant of the loan, the Appellant referred to a bank draft for €20,000 at page 6 of 63 of the Appellant’s Book of Documents, and to a document submitted at the hearing called a “Schedule of Payments”, which, she said, showed repayments made [REDACTED] [REDACTED] in 2018 and 2019.

Submissions

Appellant’s Submissions

24. The Commissioner will now summarise the submissions made by the Appellant, both in the documentation submitted in support of this appeal and at the hearing, as follows:

- 24.1. The Respondent treated a loan which the Appellant received [REDACTED] in the amount of €225,000 as a gift. Interest was chargeable and was included in income tax returns of [REDACTED]. The initial repayment of the loan was due upon the sale of a specific property. The Appellant has made repayments [REDACTED] in the amounts of €20,000 and €12,450, totalling €32,450.
- 24.2. The Respondent assessed the deemed receipt of monies which were in fact business expenses. In written submissions, the Appellant stated that business expenses in the amount of €28,834 were paid by the Appellant. At the hearing, the Commissioner asked the Appellant's representative to specify what business expenses the Appellant was claiming. In response, the Appellant's representative specified the following: [REDACTED] (at page 18 of the Appellant's Book of Documents); a tax report for [REDACTED] [REDACTED] (at page 21 of the Appellant's Book of Documents); and €7,200 paid for NPPR (at pages 29 to 45 of the Appellant's Book of Documents). In response to a question from the Commissioner as to whether the Appellant claimed any other business expenses, the Appellant's representative stated: "*No. The rest we would agree is subject to CAT*".
- 24.3. The Respondent assessed the deemed receipt of the unconfirmed cash withdrawals in the amount of €257,676 by the Appellant [REDACTED]. However, the Appellant did not receive those monies. The Appellant's bank accounts were provided and none of the unconfirmed cash withdrawals were received by the Appellant. Presuming receipt is not proof. The Appellant has repeatedly said that she did not receive the money and that neither her husband nor children received it.
- 24.4. In closing submissions, the Appellant's representative submitted that in family situations the "*dotting of the i and the crossing of the t of security etc of loan agreements just does not happen*". He stated that it was traumatic for the Appellant to deal with [REDACTED] the banks and that she had been [REDACTED] [REDACTED]. [REDACTED] [REDACTED] The Appellant should have included the loan at probate but was not thinking straight.

Respondent's Submissions

25. The Commissioner will now summarise the submissions made by the Respondent, both in the documentation and at the hearing, as follows.

- 25.1. In accordance with *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, the burden of proof is on the Appellant to demonstrate the following: the Appellant accepted the offer of a loan [REDACTED] and funds paid to her or to her husband for her benefit represent the drawing down of that loan; business expenses were incurred by the Appellant [REDACTED] and were subsequently repaid; and the use to which the unconfirmed cash withdrawals were put. Yet no documentary evidence has been produced of a loan being offered, accepted or repaid by the Appellant; no vouching evidence has been produced to support the business expenses; and no evidence or explanation has been produced as to the ultimate recipient of the unconfirmed cash withdrawals.
- 25.2. The will [REDACTED] does not mention any loans or assets due to her from either the Appellant [REDACTED]. The probate form does not include any outstanding loans in the estate assets. This supports the Respondent's case that the confirmed cash withdrawals were gifts and not loans. The will [REDACTED] does not mention cash withdrawals or investments arising from same, which supports the case that the unconfirmed cash withdrawals were gifted to the Appellant. The Appellant's house was listed for sale [REDACTED]. Its construction and finish were clear from the property listing and of considerable expense. The Appellant's declared income in the relevant years would not have sufficed to pay for this. Absent any other explanation, it is consistent with the unconfirmed cash withdrawals being gifted to the Appellant.
- 25.3. At the hearing, in reply to a question from the Commissioner about the burden of proof, the Respondent submitted that the same burden of proof applies in respect of the confirmed cash withdrawals and the unconfirmed cash withdrawals.
- 25.4. In closing submissions, counsel for the Respondent submitted the following. The evidence showed a pattern of money being given by [REDACTED]
[REDACTED]
[REDACTED]. Any supporting documentation provided by the Appellant was provided after the fact. It was convenient that the Appellant repaid €20,000 before the first hearing of this appeal. The only evidence was the copy of a bank draft from a few months before the first hearing of this appeal. That was the only document beside the letter [REDACTED]. The probate form acknowledges the potential of a repayment of €150,000 but does not mention the

loan agreement. There is no evidence of repayment terms, due date, interest, or any specific event that could trigger payment; only the properties [REDACTED] which were to be sold. The evidence on the business expenses shows personal expenses. A comparison of pages 17 and 18 of the Appellant's Book of Documents shows that the Appellant's argument is not credible. The NPPR payments were made for the benefit of the Appellant. The case on the unconfirmed cash withdrawals is harder for the Respondent but the Appellant has refused to say where the money is. The Appellant's family had a significant lifestyle: [REDACTED]. There is no record of anybody looking for the withdrawn amount of €767,000 (€257,676 of which was attributed by the Respondent to the Appellant) and the Appellant was the executrix of the estate. The lack of evidence is in itself evidence that the Appellant believes that the family received the money.

Material Facts

26. At the hearing, the parties agreed the following facts, which the Commissioner accepts as material facts:

- 26.1. The Appellant received the confirmed cash withdrawals [REDACTED] in the amount of €292,067.
- 26.2. The Appellant also received monies [REDACTED] in the amounts of €70,000 (in 2012) and €25,000 (in 2015), which amounts are not reflected in the assessments. The amount of €70,000 was a gift [REDACTED] to the Appellant.
- 26.3. The Appellant received consultancy fees [REDACTED] in the amount of €34,700, which amount is reflected in the assessments but which has subsequently been assessed to income tax.

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

- 27.1. The Appellant provided no contemporaneous evidence of the provision of a loan [REDACTED] to the Appellant in the amount of €225,000 or in any other amount.
- 27.2. No documentary evidence of interest paid by the Appellant [REDACTED] in respect of a loan was provided to the Commissioner.

- 27.3. The Appellant provided the following documentation in relation to repayments: a letter [REDACTED], a bank draft in the amount of €20,000 [REDACTED], and a document described as a schedule of repayments.
- 27.4. The probate form [REDACTED] did not reference a loan.
- 27.5. The will [REDACTED] did not reference a loan.
- 27.6. The Appellant did not present supporting documentation in relation to the payment of the business expenses to show the account(s) out of which the business expenses were paid.
- 27.7. There was no documentary evidence of the unconfirmed cash withdrawals having been received by the Appellant.

Analysis

28. This appeal relates to the raising of assessments to CAT by the Respondent for the tax years 2012, 2013, 2014 and 2015. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

“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”.

29. The Court of Appeal recently confirmed this position in *JSS & Ors v A Tax Appeal Commissioner* [2025] IECA 96, in which McDonald J. stated at paragraph 34 that:

“both s.949AK(1) and s.50(6) the 1960 Act proceed on the basis that the assessment will stand unless it is established that the assessment is wrong...the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”

30. Section 4 of the CATCA 2003 makes provision for a tax on gifts taken by a person. Section 5 of the CATCA 2003 provides that a person is deemed to take a gift where they become beneficially entitled to the ownership of property *“otherwise than for full consideration in money or money’s worth paid...”*.

31. The Respondent raised assessments to CAT on the following basis:

Year	Confirmed Cash Withdrawals	Unconfirmed Cash Withdrawals	Assessable Amount	Less Small Gift Exemption	CAT Rate	Total
2012	€32,119	€69,875	€101,994	€3,000	30%	€29,698
2013	€22,548	€39,525	€62,073	€3,000	33%	€19,494
2014	€30,700	€48,940	€79,640	€3,000	33%	€25,291
2015	€206,700	€99,336	€306,036	€3,000	33%	€100,002
Total	€292,067	€257,676	€549,743			€174,485

32. In addition, the parties agreed that the Appellant also received monies [REDACTED] [REDACTED] in the amounts of €70,000 (in 2012) and €25,000 (in 2015), which amounts are not reflected in the assessments, and that the amount of €70,000 was a gift [REDACTED] to the Appellant. The Respondent submitted that the assessments should be increased to reflect both these amounts. Section 949AK of the TCA 1997 provides that the Commissioner shall determine that the assessment be reduced or increased, or that it stand. Section 949AA(5) of the TCA 1997 allows the Respondent to give reasons at a hearing in support of an increased assessment. The Commissioner is therefore satisfied that she may consider whether the assessments should be increased on the basis that these additional amounts were gifts chargeable to CAT.
33. Furthermore, the parties agreed that the Appellant had received consultancy fees [REDACTED] [REDACTED] in the amount of €34,700, which amount is reflected in the assessments but which has subsequently been assessed to income tax. The parties agreed that the assessments should be reduced accordingly. As noted above, the legislation provides that the Commissioner shall determine that the assessment be reduced or increased, or that it stand. The Commissioner is therefore satisfied that she may determine whether the assessments should be reduced having regard to the above. For clarity, the matter under appeal in this case relates to the assessments to CAT; the Commissioner will make no finding on the chargeability of €34,700 to income tax.

34. It was undisputed in this appeal that the Appellant had previously surpassed the Group A CAT threshold and the amounts received by her [REDACTED] would be assessable to CAT if they were determined to be gifts. In summary, the Appellant's grounds of appeal were that the assessments should be reduced to reflect the fact that:

34.1. The Appellant received a loan [REDACTED] in the amount of €225,000;

34.2. Certain amounts of money were used to discharge business expenses;

34.3. The Appellant received consultancy fees [REDACTED] in the amount of €34,700; and

34.4. The Appellant did not receive the unconfirmed cash withdrawals.

The Commissioner will now proceed to consider each of these issues in turn.

Loan

35. The parties agreed that the Appellant received the confirmed cash withdrawals in the amount of €292,067. They also agreed that the Appellant received additional amounts of €70,000 and €25,000 [REDACTED], €70,000 of which was a gift. The Commissioner has accepted these as material facts. The Appellant submitted that she received the amount of €225,000 as a loan rather than as a gift.

36. Therefore, the Commissioner must consider whether the Appellant has discharged the burden of proof to show that the amount of €225,000 which the Appellant received was in fact a loan rather than a gift. The standard of proof in considering this matter is the civil standard of proof; that is to say, on the balance of probabilities. In forming an opinion on this matter, the Commissioner has had particular regard to the factors outlined below.

37. The Appellant provided no contemporaneous evidence of the amount of €225,000 having been lent to the Appellant [REDACTED]. She presented no written loan agreement, whether witnessed by a solicitor or not. She presented no evidence of transfers of money [REDACTED] to the Appellant being described as loans in any bank statements. She presented no informal documentation, such as an exchange of emails or text messages. It follows that the Appellant provided no contemporaneous evidence of the provision of a loan [REDACTED] to the Appellant in the amount of €225,000 or in any other amount. The Commissioner has found this to be a material fact and notes that this is consistent with the Appellant's own evidence, during which she said that there was: *"[N]othing formal in place. We would have had conversations among ourselves but nothing formal"* and when asked: *"nothing in writing either"*, she stated: *"no"*.

38. The Appellant testified that the loan was given by way of an oral agreement. She agreed that the first document to state that [REDACTED] lent her money was a letter [REDACTED]. The Commissioner observes that this letter stated: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
39. There was no dispute that the initial probate form for the estate [REDACTED] [REDACTED], did not reference a loan of €225,000. The Commissioner has found this to be a material fact and observes that this is consistent with a copy of the probate form [REDACTED] enclosed with the Respondent's Supplemental Outline of Arguments, which states: "*Debts owing to the deceased: No*" and "*Other assets: Yes, €150,000 settlement monies due in respect of sale of property [REDACTED]*".
40. Additionally, the Commissioner notes that the Respondent's Supplemental Outline of Arguments encloses a copy of the will [REDACTED], which does not refer to any loan. The Commissioner has found this to be a material fact.
41. The Appellant presented no contemporaneous evidence of any repayment terms agreed between the Appellant [REDACTED], or regarding any security given for the loan. In evidence, the Appellant agreed that "[REDACTED] *didn't have security, you know*" and that a repayment amount of €150,000 first arose in the context of a settlement agreement with the banks. In that respect, the Commissioner observes that the Appellant's Book of Documents contains a Deed of Settlement [REDACTED]. The Appellant agreed in evidence that the Deed provided that €150,000 from the proceeds of a property sale was to be given to the Appellant, [REDACTED]. However, the Appellant did not contend that the Deed itself provided for the repayment of a loan in the amount of €150,000 or in any other amount, [REDACTED]. The Commissioner also notes that the letter [REDACTED] refers to a repayment of €50,000 [REDACTED] upon the sale of properties [REDACTED], and the initial probate form [REDACTED] refers to settlement monies in the amount of €150,000 as referred to above.
42. Turning then to whether repayments were in fact made, the Commissioner was presented with the following documentation: a letter [REDACTED]
[REDACTED], a bank draft in the amount of €20,000 made out to [REDACTED]

██████████, and a document described as a schedule of repayments. The Commissioner has found this to be a material fact. No evidence of the lodgement of the bank draft into an account ██████████ was presented. While the schedule of repayments listed dates and repayments in the amount of €32,450, no documentary evidence was presented to verify the repayments listed, other than the bank draft referenced above. In answer to a question from the Commissioner about bank statements for the repayments, the Appellant's representative confirmed that: "*I haven't got it here with me*". Although the Appellant testified that ██████████ accounted for repayments in ██████████ income tax returns, no such income tax returns were presented to the Commissioner.

43. In written submissions, the Appellant stated that interest was chargeable on the loan and had been included on income tax returns ██████████. However, at the hearing of the appeal, the Appellant did not refer to, or elaborate on, the question of interest. More fundamentally, no documentary evidence of interest paid by the Appellant ██████████ in respect of a loan was provided to the Commissioner. The Commissioner has found this to be a material fact.
44. In closing submissions, the Appellant's representative submitted that the "*dotting of the i and the crossing of the t*" in family loans does not happen. However, the Commissioner considers this to be a general assertion which does not assist the Appellant's case. In this tax appeal, the burden of proof is on the Appellant, and it is therefore for the Appellant to establish that the amounts concerned were given as a loan. Accordingly, it was for the Appellant to retain the necessary records to enable her to substantiate the claim that the monies given were in fact a loan.
45. In the Commissioner's view, the amount of €225,000 is not a small sum. In that context, the Commissioner finds it noteworthy that no contemporaneous documentation of the provision of the loan was presented: for example, no written agreement, bank statement descriptor, email, or text messages. The Commissioner observes that the first written document on the matter was the letter ██████████. In evaluating the evidential value which can be given to this letter, the Commissioner has noted that its date was proximate to the date of the first hearing of this appeal on 11 October 2022 and also that it was not possible for direct evidence to be given on its content.
46. Furthermore, the Commissioner considers it notable that there is limited evidence of repayments having been made. The Commissioner is satisfied that the document described as a Schedule of Repayments has no evidential value, in circumstances where

that document is a list of repayments which is unsupported by documentation to evidence the fact of those repayments. While the Commissioner acknowledges the bank draft in the amount of €20,000 made out [REDACTED], she also notes that there is no documentary evidence of a corresponding amount having been lodged into an account [REDACTED]. In addition, the Commissioner observes that the bank draft was made seven years after the loan was said to have been given and in the same year as the first hearing of this appeal. In all these circumstances, the Commissioner considers it appropriate to attach limited evidential value to the bank draft. The Commissioner acknowledges that the letter [REDACTED] stated that [REDACTED] received repayments in the amount of €32,450 from the Appellant. It was of course not possible for direct evidence to be given on the content of this letter. Even had that been possible, the Commissioner would have expected to have been presented with documentary evidence of such repayments.

47. Finally, the Commissioner observes that the initial probate form [REDACTED], which contains a section on debts to the estate, did not reference a loan to the Appellant in the amount of €225,000. The Commissioner further notes that the Appellant testified that the probate form was amended to include reference to the loan in the week before the hearing of this appeal. The Commissioner acknowledges and has sympathy with the personal circumstances which the Appellant outlined when asked about the matter. Nonetheless, the Commissioner is not satisfied that the Appellant adequately explained the initial failure to include the loan in probate and considers that the explanation given is inconsistent with the fact that the Appellant agreed she had legal assistance in completing the form.
48. Given all of the above, the Commissioner finds that the evidence overall points towards the fact that on the balance of probabilities, the Appellant did not receive a loan [REDACTED] in the amount of €225,000, albeit that those monies were described as a loan by the Appellant [REDACTED] during this tax appeal. The Commissioner therefore finds that the Appellant has not discharged the burden of proof to show that the amount of €225,000 was in fact a loan rather than a gift.
49. In light of the above finding and for the avoidance of doubt, the Commissioner finds that the additional money which the Appellant received [REDACTED] in the amount of €25,000 (in 2015) was a gift chargeable to CAT. The Commissioner is therefore satisfied that the assessments should be increased on the basis that the Appellant received additional monies [REDACTED] in the amounts of €70,000 (in 2012) and €25,000 (in 2015), which were gifts chargeable to CAT.

Business Expenses

50. Turning now to the business expenses, the Commissioner must consider whether the Appellant has discharged the burden of proof to show that the amounts of money claimed as business expenses were not a gift.
51. At the hearing, the Appellant's representative submitted that the Appellant claimed the following business expenses: [REDACTED] (at page 18 of the Appellant's Book of Documents); a tax report [REDACTED] (at page 21 of the Appellant's Book of Documents); and €7,200 paid for NPPR (at pages 29 to 45 of the Appellant's Book of Documents). In response to a question from the Commissioner as to whether the Appellant claimed any other business expenses, the Appellant's representative stated: "*No. The rest we would agree is subject to CAT*".
52. The Commissioner notes that page 18 of the Appellant's Book of Documents shows a paid invoice for "*fee for professional services rendered*" dated 17 July 2012 in the amount of €5,596.50 (including VAT), and page 21 of the Appellant's Book of Documents shows a paid invoice for "*fee for professional services rendered preparation of tax report*" [REDACTED] dated 16 October 2013 in the amount of €330 (including VAT).
53. In evidence, the Appellant agreed with her representative that the business expenses amounted to €76,000, €18,000 of which was in respect of the NPPR. She stated in relation to the invoice at page 18 that: "*we were going through the banking situation and the receiverships and this was a payment on, I understand it to be a payment on the account* [REDACTED] *I was the point of contact, so this is for ongoing professional fees from the accountancy*". In relation to the invoice at page 21, she stated that: "*Yes, that's correct*" in answer to a question from her representative: "*Page 21, a tax report* [REDACTED]". On cross-examination, the Appellant agreed that the NPPR referred to on pages 29 – 45 related to five properties, three of which were her properties.
54. In considering this matter, the Commissioner has had particular regard to the following factors. The Appellant did not present supporting documentation in relation to the payment of the business expenses to show the account(s) out of which the business expenses were paid. The Commissioner has found this to be a material fact. Furthermore, the Appellant agreed in evidence that the business expenses amounted to €76,000, €18,000 of which was the NPPR. On cross-examination, the Appellant acknowledged that the NPPR related to five properties, three of which were owned by her. The Appellant also agreed that pages 23 and 26 of the Appellant's Book of Documents referred to

solicitor's work relating to [REDACTED]. Additionally, the Appellant's written submissions had stated that the Appellant paid business expenses in the amount of €28,834. Yet during submissions by the Appellant's representative, it transpired that the only business expenses being claimed by the Appellant were at pages 18, 21, and 29 - 45 of the Book of Documents. Those expenses did not amount to €76,000 or €28,834 and the NPPR being claimed amounted to €7,200 and not €18,000. Moreover, the Commissioner notes that the NPPR related to properties owned by the Appellant and yet the Appellant, who bears the burden of proof in this appeal, did not clarify the basis on which expenses relating to her properties were claimed to have been business expenses. In addition, the Commissioner observes that on cross-examination, the Appellant accepted that she was "*not sure*" about the invoice at page 18 of the Appellant's Book of Documents and did not have supporting documentation for it.

55. In this appeal, the burden of proof is on the Appellant to demonstrate that the amounts of money claimed as business expenses were not a gift. Yet the Commissioner finds that the Appellant's submissions on the business expenses were unclear, inconsistent, and uncorroborated by documentary evidence. Additionally, the Commissioner finds that the evidence given by the Appellant on the business expenses was inconsistent. Consequently, the Commissioner is not satisfied to conclude that the evidence shows on the balance of probabilities that the amounts of money claimed as business expenses were not a gift. The Commissioner finds that the Appellant has not discharged the burden of proof in this respect.

Consultancy Fees

56. The parties agreed that the Appellant received consultancy fees in the amount of €34,700 [REDACTED], which amount is reflected in the assessments but which has subsequently been assessed to income tax. The Commissioner has found this to be a material fact. The parties agreed that the assessments should be reduced accordingly. Given this, the Commissioner is satisfied that the assessments should be reduced on the basis that the consultancy fees which the Appellant received [REDACTED] in the amount of €34,700 were not a gift chargeable to CAT. As noted above, the Commissioner makes no finding on the chargeability of this amount to income tax.

Unconfirmed Cash Withdrawals

57. In written submissions, the Respondent submitted that the burden of proof lay on the Appellant to demonstrate the use to which the unconfirmed cash withdrawals were put, and the Appellant had not done so. However, the Commissioner does not agree that this submission represents the appropriate starting point.

58. The Commissioner considers it important to make clear that the question arising is not who received the unconfirmed cash withdrawals, but whether the Appellant has shown that the assessments were wrong. As noted above, the Court of Appeal in *JSS* and the High Court in *Menolly* have made clear that the burden of proof in a tax appeal lies on the Appellant to demonstrate that the assessment is wrong. The Commissioner observes that a premise of this case-law is that: “*since an assessment can only relate to the applicant’s own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power, procurement and control of the applicant*”, see *TJ v Criminal Assets Bureau* [2008] IEHC 168 and that: “*the income, assets, presence within the State and business affairs of any person are matters which are peculiarly within the knowledge of that person*”, see *JSS v a Tax Appeal Commissioner* [2024] IEHC 565.
59. With this in mind, the Commissioner is satisfied that the burden of proof is on the Appellant to show whether the assessments are wrong insofar as they were raised on the basis that she received the unconfirmed cash withdrawals in the amount of €257,676.
60. That said, the Commissioner does not accept that this burden extends to showing “the use to which the unconfirmed cash withdrawals was put”, for the reason that this is not a matter which “*would have to be or have been in the knowledge and in the power, procurement and control*”, or would be “*peculiarly within the knowledge*” of the Appellant.
61. On the one hand, there was no dispute in this case that there was no documentary evidence of the Appellant having received the unconfirmed cash withdrawals. The Commissioner has found this to be a material fact. Furthermore, the Appellant repeatedly testified that she did not receive the unconfirmed cash withdrawals. [REDACTED]
[REDACTED]
[REDACTED]. She agreed that to her knowledge the Respondent had not sought bank accounts [REDACTED]
[REDACTED]. She stated that she had not asked [REDACTED] about the unconfirmed cash withdrawals. She denied that the unconfirmed cash withdrawals had been used as expenditure in relation to her property, or that there was a change in her lifestyle or new assets purchased to reflect the unconfirmed cash withdrawals.
62. In addition, the Commissioner notes that the documents presented contain a handwritten letter [REDACTED], in which [REDACTED] stated that [REDACTED] did not receive any money from withdrawals [REDACTED]
[REDACTED]. That letter was not opened to the Commissioner at the hearing and it was of course not possible for direct evidence to be given on it. The Commissioner

considers that the letter can be afforded limited evidential value either way in the circumstances.

63. On the other hand, the Respondent submitted that the surrounding circumstances showed on the balance of probabilities that the Appellant received the unconfirmed cash withdrawals, and adverted to the following. There was a pattern of money being given [REDACTED]. During the Respondent's audit, [REDACTED] did not say what had happened to the unconfirmed cash withdrawals. The will [REDACTED] did not mention the amounts of the unconfirmed cash withdrawals. There was no record of anybody looking for what was a significant amount of money and the Appellant was the executrix of the estate. The Respondent said that this evidenced that the Appellant knew where the money was: it had been received by the Appellant [REDACTED]. No witness was called regarding the destination of the unconfirmed cash withdrawals. The Appellant led a significant lifestyle, and the listing for the Appellant's property showed a construction and finish of considerable expense. This was consistent with the receipt of the unconfirmed cash withdrawals by the Appellant.
64. The Commissioner acknowledges the Respondent's submission on the Appellant's lifestyle and the listed property. However, while the Commissioner was presented with a property listing, she was not presented with evidence of expenditure on the property's construction and finish which showed how much was spent and the means of payment, when it was spent, or by whom it was spent. Neither was the Commissioner presented with evidence of the expenditure on aspects of the Appellant's lifestyle referred to by the Respondent which showed how much was spent and the means of payment, when it was spent, or by whom it was spent. The Commissioner therefore considers that she is being presented with a broadbrush impression of a certain lifestyle, from which she is invited to infer that on the balance of probabilities, the Appellant received the unconfirmed cash withdrawals in the amount of €257,676.
65. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
66. The Commissioner can see that one possible explanation for the fact the Appellant agreed that she did not look for the unconfirmed cash withdrawals would be because she knew she had received those monies. However, the Commissioner does not agree that it follows from the fact that this is one possible explanation that it is, on the balance of

probabilities, the case. The Commissioner considers it noteworthy that while the Respondent's audit identified that the confirmed cash withdrawals were received by the Appellant [REDACTED], there was no documentary evidence of the unconfirmed cash withdrawals having been received by the Appellant [REDACTED], and the Appellant testified that she did not receive them.

67. The Commissioner appreciates that she is being invited to reach a conclusion having regard to an overall picture. Having carefully considered the submissions and evidence on this matter, the Commissioner is not satisfied to draw the inference which she is being invited to draw. The Commissioner considers that to reach this conclusion would require much supposition on her part. On balance, the Commissioner concludes that there is insufficient evidence to satisfy her that on the balance of probabilities, the Appellant received the unconfirmed cash withdrawals of €257,676 [REDACTED] as a gift.
68. Consequently, the Commissioner finds that the Appellant has discharged the burden to show that the assessments were wrong insofar as they were raised on the basis that she received the unconfirmed cash withdrawals in the amount of €257,676. The Commissioner is therefore satisfied that it is appropriate to reduce the assessments accordingly.

Conclusion

69. In conclusion, the Commissioner has found that:
- 69.1. the Appellant has not discharged the burden of proof to show that the amount of €225,000 was in fact a loan rather than a gift;
 - 69.2. the Appellant has not discharged the burden of proof to show that the amounts of money claimed as business expenses were not a gift;
 - 69.3. the assessments should be reduced on the basis that the consultancy fees which the Appellant received [REDACTED] in the amount of €34,700 were not a gift chargeable to CAT; and
 - 69.4. the Appellant has discharged the burden of proof to show that the assessments were wrong insofar as they were raised on the basis that she received the unconfirmed cash withdrawals in the amount of €257,676.
70. The Commissioner appreciates that the Appellant may be disappointed in part with this outcome. The Appellant was entitled to check that her legal rights were correctly applied.

Determination

71. For the reasons set out above, the Commissioner determines that:

- 71.1. the Appellant has not succeeded in showing that the assessments should be reduced on the ground that she received a loan [REDACTED] in the amount of €225,000;
- 71.2. the Appellant has not succeeded in showing that the assessments should be reduced on the ground that the amounts of money claimed as business expenses were not a gift;
- 71.3. the Appellant has succeeded in showing that the assessments should be reduced on the ground that she did not receive the unconfirmed cash withdrawals in the amount of €257,676;
- 71.4. the consultancy fees which the Appellant received [REDACTED] in the amount of €34,700 were not a gift chargeable to CAT;
- 71.5. the additional monies which the Appellant received [REDACTED] in the amounts of €70,000 (in 2012) and €25,000 (in 2015) were gifts chargeable to CAT; and

the assessments shall be adjusted in accordance with the above findings, and therefore the assessments shall be reduced.

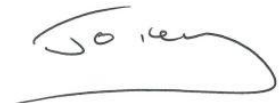
72. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

73. 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

74. 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.

A handwritten signature in dark ink, appearing to read 'Jo Kenny', with a long horizontal flourish extending to the right.

Jo Kenny
Appeal Commissioner
13 October 2025