AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

26TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against a Notice of Amended Assessment to Capital Gains Tax (from here on referred to as "CGT") for the year 2018 issued by the Revenue Commissioners (from here on referred to as the "Respondent") on 27 May 2021 showing an underpayment of tax of €457,216.00 which was comprised of €415,651.00 of CGT payable and €41,565.00 of a surcharge for the late submission of a return.

Background

2. Ms [redacted] (from here on referred to as the "Appellant") is a taxpayer who is resident and domiciled in Ireland.

3. On 6 November 2001, the Appellant purchased a property at [redacted] (from here on referred to as the "Property"). The Property was an investment and was not utilised as the Appellant's residence.

4. The parties are agreed that, based on the information contained in the stamp duty return made in relation to the Property in 2001, a purchase price of €1,034,838.10 (IR£815,000 when converted using the exchange rate of 1.26974) is applicable to the Property.

5. Stamp duty of €93,135.43 (IR£73,350 when converted using the exchange rate of 1.26974) was paid by the Appellant on the purchase of the Property in 2001.

6. On [redacted] 2018, the Appellant sold the Property for €2,500,000.

7. The Appellant did not submit a CGT return relating to the sale of the Property.

8. The Respondent commenced an intervention into the Appellant's tax affairs which was escalated to an audit on 2 October 2020.

9. As part of a prompted disclosure, the Appellant submitted a Form 11 tax return for the year 2018 to the Respondent on 15 December 2020. This return submitted did not contain any information in relation to the disposal of the Property or of any previous capital gains losses which might have been available to the Appellant.

10. On foot of the submission of the Form 11 tax return for the year 2018 submitted by the Appellant to the Respondent, a Notice of Assessment to CGT for 2018 was issued by the Respondent to the Appellant on 15 December 2020 which showed the amount of chargeable gains arising as €0.00 and a balance of CGT due of €0.00.

11. On 8 April 2021, 19 April 2021 and 26 April 2021, the Respondent requested the Appellant to provide a CGT computation for 2018 along with all supporting documentation in relation to any CGT computation for 2018. No CGT computation was submitted by the Appellant to the Respondent.

12. On 27 May 2021, the Respondent issued a Notice of Amended Assessment to CGT for 2018 which showed an underpayment of tax of €457,216.00 which was comprised of €415,651.00 of CGT payable relating to the disposal of the Property and €41,565.00 of a surcharge for the late submission of a return.

13. The Appellant submitted an appeal in relation to the Notice of Amended Assessment to the Commission on 28 June 2021.

14. The oral hearing of this appeal commenced on 31 July 2024. The Appellant did not appear at the hearing but was represented by her Tax Agent who did attend at the oral hearing. The Tax Agent confirmed to the Commissioner that he had full instructions from the Appellant to proceed with the oral hearing and, on that basis, the Commissioner excused the Appellant from the requirement to attend at the oral hearing.

15. The Appellant submitted a book of documents to support her claim on 30 July 2024, the day before the commencement of the oral hearing. During the course of the progression of this appeal, it became clear that the Appellant had not submitted documentation in support of her claim that she had incurred an allowable loss in relation to an investment which she had made in 2007 the details of which are set out in this determination. Following the completion of the first day of oral hearing, the Commissioner allowed the Appellant time to submit additional documentation which said documentation was submitted by the Appellant. The oral hearing of the appeal resumed for a second day on 14 April 2025 and concluded on that date.

Legislation and Guidelines

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

Section 28 of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997") as in force from 6 December 2012 onwards entitled "*Taxation of capital gains and rate of charge*":

> *"(1) Capital gains tax shall be charged in accordance with the Capital Gains Tax Acts in respect of capital gains, that is, in respect of chargeable gains computed in accordance with those Acts and accruing to a person on the disposal of assets.*

(2) Capital gains tax shall be assessed and charged for years of assessment in respect of chargeable gains accruing in those years.

(3) Except where otherwise provided by the Capital Gains Tax Acts, the rate of capital gains tax in respect of a chargeable gain accruing to a person on the disposal of an asset shall be 33 per cent, and any reference in those Acts to the rate specified in this section shall be construed accordingly."

Section 29 of the TCA 1997 as in force from 19 October 2017 – 21 November 2021 entitled *"Persons chargeable":*

"…

(2) Subject to any exceptions in the Capital Gains Tax Acts, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to such person in a year of assessment for which such person is resident or ordinarily resident in the State.

…"

Section 31 of the TCA 1997 as in force from 30 November 1997 – onwards entitled *"Amount chargeable":*

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

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

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

Section 532 of the TCA 1997 as in force from 1 January 2013 – onwards entitled *"Assets":*

"All forms of property shall be assets for the purposes of the Capital Gains Tax Acts whether situated in the State or not, including -

(a) options, debts and incorporeal property generally,

(b) any currency other than the currency of the State, and

(c) any form of property created by the person disposing of it, or otherwise becoming owned without being acquired."

Section 541 of the TCA 1997 entitled *"Debts":*

> *"(1) (a) For the purposes of the Capital Gains Tax Acts but subject to paragraph (b), where a person incurs a debt to another person (being the original creditor), whether in the currency of the State or in some other currency, no chargeable gain shall accrue to that creditor or to that creditor's personal representative or legatee on a disposal of the debt.*
>
> *(b) Paragraph (a) shall not apply in the case of a debt on a security within the meaning of section 585.*
>
> *…*
>
> *(4) For the purposes of the Capital Gains Tax Acts, a loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or the original creditor's personal representative or legatee at a time when the creditor or the creditor's personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more than one purchase through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.*
>
> *(5) Where the original creditor is a trustee and the debt when created is settled property, subsections (1) and (4) shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled as against the trustee to the debt on its ceasing to be settled property and to that person's personal representative or legatee.*
>
> *…*"

Section 545 of the TCA 1997 as in force from 30 November 1997 – onwards entitled *"Chargeable gains":*

> *"(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no chargeable gain shall accrue on its disposal.*
>
> *(2) The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts.*
>
> *(3) Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain."*

Section 546 of the TCA 1997 as in force from 30 November 1997 – onwards entitled *"Allowable losses":*

> *"(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no allowable loss shall accrue on its disposal.*
>
> *(2) Except where otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.*
>
> *(3) Except where otherwise expressly provided, the provisions of the Capital Gains Tax Acts which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly.*
>
> *(4) A loss accruing to a person in a year of assessment for which the person is neither resident nor ordinarily resident in the State shall not be an allowable loss for the purposes of the Capital Gains Tax Acts unless under section 29(3) the person would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.*
>
> *(5) Except where provided by section 573, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Acts -*
>
> > *(a) more than once in respect of any loss or part of a loss, and*
> >
> > *(b) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts.*
>
> *(6) For the purposes of section 31, where, on the assumption that there were no allowable losses to be deducted under that section, a person would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, any allowable losses to be deducted under that section shall be deducted -*
>
> > *(a) if the person would be so chargeable at 2 different rates, from the chargeable gains which would be so chargeable at the higher of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the lower of those rates, and*

(b) if the person would be so chargeable at 3 or more rates, from the chargeable gains which would be so chargeable at the highest of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the next highest of those rates, and so on."

Section 552 of the TCA 1997 as in force from 1 January 2014 – onwards entitled *"Acquistion, enhancement and disposal costs":*

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

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

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

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

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

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

(1B) (a) In this subsection-

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

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

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

(b) Where-

> *(i) the amount or value of the consideration referred to in subsection (1)(a), or*
>
> *(ii) the amount of any expenditure referred to in subsection (1)(b), was defrayed either directly or indirectly out of borrowed money, the debt in respect of which is released in whole or in part (whether before, on or after the disposal of the asset), that amount shall be reduced by the lesser of the amount of the debt which is released or the amount of the allowable loss which, but for this subsection, would arise.*

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

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

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

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

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

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

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

(3) (a) Where -

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

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

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

(iv) the company is chargeable to capital gains tax in respect of the gain, then, the sums so allowable under subsection (1) shall include the

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

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

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

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

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

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

shall be allowable as a deduction under this section."

Section 585 of the TCA 1997 entitled *"Conversion of securities":*

1. *In this section –*

…

"security" includes any loan stock or similar security, whether of any government or of any public or local authority or of any company and whether secured or unsecured but excluding securities within section 607."

Section 959V of the TCA 1997 as in force from 18 December 2013 – 20 December 2021 entitled "*Amendment by chargeable person of return and of self assessment in return*".

(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

(2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self assessment for the chargeable period at the same time.

(2A) A return and self assessment may be amended under this section only where such an amendment -

(a) arises from an allowance, credit, deduction or relief due under the Acts,

(b) is necessary to correct either an error or a mistake, or

(c) is necessary to comply with any other provision of the Acts,

and notice of an amendment under this section shall specify which of paragraphs (a), (b) and (c) applies.

(3) Subject to subsection (4), notice under this section shall be given in writing to a Revenue officer in the Revenue office dealing with the tax affairs of the chargeable person.

(4) (a) Notice under this section in relation to the amendment of a return and a self assessment shall be given by electronic means where the return was delivered by electronic means.

(b) The electronic means by which notice under this section shall be given shall be such electronic means as may be specified by the Revenue Commissioners for that purpose.

(c) This subsection shall not apply to an amendment to a return or self assessment in so far as it relates to capital gains tax.

(5) Where another person, as referred to in section 959L, is acting under the chargeable person's authority -

(a) notice under subsections (1) and (2) may be given by that other person, and

(b) where notice is so given by that other person -

(i) the Acts apply as if the return and the self assessment had been amended by the chargeable person, and

(ii) a return and a self assessment purporting to have been amended by or on behalf of any chargeable person shall for the purposes of the Acts be deemed to have been amended by that person or by that person's authority, as the case may be, unless the contrary is proved.

(6) (a) Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.

(b) Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief.

(7) Notice under this section shall not be given in relation to a return and a self assessment after a Revenue officer has started to make enquiries under section 959Z in relation to the return or self assessment or after he or she has commenced an audit or other investigation which relates to the tax affairs of the person to whom the return or self assessment relates for the chargeable period involved"

Submissions

17. No witness evidence was adduced to the Commissioner by either party at the oral hearing. Both parties were asked whether they wished to adduce witness evidence at the oral hearing and both parties indicated that they did not.

Appellant's Submissions

18. The Appellant was at all times represented by her Tax Agent during the course of this appeal who confirmed to the Commissioner that he had full instructions from the Appellant to proceed with the oral hearing.[1]

19. The following ground of appeal was submitted in the Appellant's Notice of Appeal:

"We refer to the Notice of Amended Assessment issued on May 27th, 2021.

We are instructed to appeal against this Notice issued in respect of CGT Assessment for the year ended December 31st, 2018, in accordance with Section 993(1)(a) TCA, 1997.

[1] Transcript Day 1 page 4

In accordance with the relevant sections, the amount in respect of which this Appeal is being made is €457,216. We are lodging this Appeal on the basis that this amount is incorrect and excessive.

We reserve the right to expand and/or ad to the grounds of our Appeal."

20. The Appellant submitted the following in section 3 of her Statement of Case "*Outline of Relevant Facts"*:

"*The Appellant sold an investment property in* [redacted] *during 2018.*

The property had been owned for a long number of years, and significant enhancement expenditure had been incurred.

Revenue raised an Assessment on May 21st 2021.

We believe the Assessment to be exaggerated and erroneous for the following reasons:

1. *The Assessment does not take account of any selling costs.*
2. *The Assessment is based on an estimated purchase price for the subject property, which is significantly understated.*
3. *The Assessment does not take account of any costs of acquisition.*
4. *The Assessment does not take account of enhancement expenditure.*
5. *The Assessment does not take account of any allowance for wasting chattels.*
6. *The Assessment does not take account of any capital losses forward."*

21. The Appellant submitted the following in section 6 of her Statement of Case "*Supplementary Information"*:

"In our opinion this case is predominantly about calculating the correct taxable gain arising on the disposal of a property asset.

This Assessment was issued during the Pandemic when it was difficult to retrieve historic documentation.

It is our intention to lodge a settlement paper with Revenue in the coming weeks, with supporting documentation, in the hope of agreeing a position without a full hearing."

22. The Appellant did not submit an Outline of Arguments in advance of the oral hearing which commenced on 31 July 2024. However, on 30 July 2024, the Appellant submitted the following documents in support of her claim:

    22.1. CGT Computation and Notes;

    22.2. Contract of Sale dated [redacted] 2018;

    22.3. Schedule of contents included in the Sale;

    22.4. Invoice for Legal Fees from [redacted] Solicitors;

    22.5. Copy of Death Notice of [redacted] Solicitor;

    22.6. Copy of Loan Offer from [redacted];

    22.7. Copy of Loan Statement from [redacted];

    22.8. Copy of Performance Report from [redacted] Private Banking dated April 2013;

    22.9. Copy of newspaper report confirming all capital from [redacted] lost.

23. The following CGT computation was submitted by the Appellant which sets out the liability to CGT which she submits arises in 2018:

Proceeds of Sale	€2,500,000
<u>Less</u>	
Contents	€70,000
Legal Fees	€20,624
Net Proceeds	**€2,409,376**
Purchase Price	€1,015,790
Stamp Duty	€91,421
Legal Fees	€12,190
Cost of Acquisition	**€1,119,401**
Indexed Cost of Acquisition	€1,216,789

Enhancement Expenditure	€305,000
Gain on Disposal	€887,587
Loss Relief Loss on Sale of Property at [redacted] Loss on Disposal of Property at Padstow **Total Losses**	 €2,000,000 €240,000 **€2,240,000**
Net Proceeds (Loss)	**(€1,352,413)**
Chargeable Gain	**€0**

24. It was submitted that the net proceeds of sale of the Property came to €2,409,376 as set out in the CGT calculation which were calculated as being comprised of:

    24.1. A sale price of €2,500,000 as contained in the Contract of Sale of the Property dated [redacted] 2018.

    24.2. Legal fees of €20,623.59 which were incurred by the Appellant in relation to the sale of the Property. The Appellant submitted a copy of a "Statement of Costs and Outlay" from the solicitors' firm which handled the conveyance of the Property totalling €20,623.59 inclusive of Value Added Tax in support of this aspect of her claim.

    24.3. In addition, the Contract of Sale submitted provided at page 7 that contents were included in the sale price. At the oral hearing, an estimate for the value of the contents of €70,000 was submitted, without supporting documentation, as being comprised of:

Living Room • Sofa Set: High-quality leather, seating for 6 - €5,000 • Coffee Table: Oak with a glass top - €800 • Entertainment Unit: Custom-built with storage - €2,000

- Smart TV: 55-inch 4K - €1,200
- Lighting: Designer chandelier and floor lamps - €1,000
- Decor: Irish art pieces, wool rugs and cushions - €800

Kitchen

- Cabinets: Custom-built, high-gloss finish - €5,000
- Countertops: Granite - €2,500
- Appliances: High-end (fridge, oven, microwave, dishwasher) - €6,000
- Sink and Faucet: Belfast sink - €700
- Lighting: Under-cabinet and ceiling lights - €900
- Dining Table: Solid wood with 6 chairs - €2,000

Master Bedroom

- Bed: King-size with upholstered headboard - €2,500
- Mattress: Hugh quality memory foam - €1,200
- Wardrobe: Custom-built, walk-in - €3,500
- Nightstands: Matching set - €700
- Lighting: Ceiling lights and beside lamps - €900
- Decor – wool rugs, curtains and art - €800

Additional Bedrooms (3)

- Beds: Queen-size with headboards - €1,800 each (total €5,400)
- Mattresses: High-quality memory foam €900 each (total €2,700)
- Wardrobes: Built-in - €1,800 each (total €5,400)
- Nightstands: Matching sets €450 each (€1,350 total)
- Lighting: Ceiling lights and beside lamps - €700 each (total €2,100)
- Decor – wool rugs, curtains and art - €400 each (total €1,200)

Bathrooms (3) • Vanities: Custom-built with marble tops - €1,800 each (total €5,400) • Showers: walk-in with glass doors - €2,200 each (total €6,600) • Toilets: High-end models - €900 each (total €2,700) • Lighting: Ceiling and vanity lights - €450 each (total €1,350) • Accessories: Mirrors, towel racks and storage - €450 each (total €1,350)
Miscellaneous • Home Office Setup: Desk, chair and storage - €1,800 • Laundry Room: washer, dryer and storage - €2,500 • Outdoor Furniture: Patio set and BBQ - €2,000 • Security System: Cameras and alarms - €1,800
Total Estimate: €70,000

25. In relation to the cost of acquisition of the Property, it was submitted that:

25.1. The Appellant purchased the Property for €1,015,790 (IE£800,000 at an exchange rate of 1.26974). (The parties have, during the course of the oral hearing, agreed the purchase price of €1,034,838.10 (IR£815,000 when converted using the exchange rate of 1.26974) based on the Stamp Duty return made in relation to the purchase of the Property.)

25.2. Since the date of purchase of the Property in 2001, significant enhancement works were carried out on the property to the value of €305,000. This, it was submitted, was in circumstances where the property was quite run down at the time of purchase in 2001. It was submitted that, in 2002, the Appellant had engaged the services of a designer to assist in the enhancement of the Property which included the re-wiring and re-plumbing of the Property.

25.3. In relation to the claim for legal fees for the purchase of the Property, it was submitted that, because the solicitor who acted on behalf of the Appellant at that time has since passed away, it was not possible for the Appellant to retrieve a

copy of the invoice in relation to that aspect of her claim. In the circumstances, the Appellant submitted that she had estimated the fees as being a figure equivalent to 1% of the purchase value which equates to €12,190.

25.4. In relation to the amount of Stamp Duty which the Appellant paid on purchasing the Property, it was submitted that IR£73,750 (€93,643.32 when converted to Euro using an exchange rate of 1.26974) was paid.

25.5. It was submitted that the appropriate indexation basis is 1.087.

26. As a result of the above figures, the Appellant submitted that the gain on disposal of the Property amounted to €887,587, which it was submitted, was relieved by losses available to the Appellant in the form of the following losses:

26.1. a €240,000 loss on an investment in a property in Padstow in Cornwall in the United Kingdom (from here on referred to as the "Padstow Property"); and

26.2. a €2,000,000 loss on an investment at [redacted] in the United Kingdom (from here on referred to as "[redacted]").

27. It was submitted that the Appellant had purchased an investment property in Padstow in Cornwall in the United Kingdom with her brother. It was submitted that when the property was sold, there was a shortfall of €240,000 which the Appellant had to repay to the financial institution with which a loan had been taken out to finance the purchase. No documentation in relation to this claim was submitted.

28. It was also submitted that the Appellant had, on 17 July 2007, made an investment of €2,000,000 in [redacted] through the [redacted] (from here on referred to as the "Bank"). It was submitted that the investment fell into difficulty as a result of the overall economic position which prevailed at the time. In support of this, the Appellant submitted a copy of a newspaper article which was published in the Irish Times on 12 September 2012 entitled "[redacted]".

29. It was also submitted that an "*Investment Performance Review*" provided by the Bank to the Appellant for 2013 stated that, in relation to [redacted], there was a "*Technical breach of LTV covenant, therefore value shown at zero*".

30. At the first oral hearing date, the Appellant's Tax Agent submitted that he had been unable to receive a response from the Bank through which the [redacted] investment was made and that he had been unable to get any additional documentation in relation to the claimed loss.

31. Following the oral hearing on 31 July 2024, the Appellant was given time to submit further documentation on which she wished to rely in relation to her claim of losses attributable to her investment in [redacted].

32. On 15 August 2024, the Appellant submitted the following documents:

    32.1. An extract from the book-keeping system operated for the Appellant in respect of 2007;

    32.2. Letter from [redacted] dated 20 July 2007;

    32.3. Expression of Intent dated 17 July 2007;

    32.4. Irrevocable Commitment to Invest form dated 11 February 2008;

    32.5. Shareholders Agreement dated 2 February 2011;

    32.6. Deed of Amendment to Shareholders Agreement dated 2 February 2011;

    32.7. Advisory letter from [redacted] dated 12 March 2013;

    32.8. Letter from [redacted] Limited;

    32.9. Loan Note Repayment Agreement dated 15 December 2015;

    32.10. Advisory letter from [redacted] dated 11 February 2016;

    32.11. Letter from [redacted] dated 13 August 2024.

33. At the recommenced hearing, it was submitted that the [redacted] investment involved the purchase of a retail park in [redacted] by [redacted] which was funded by a mixture of investments by the Appellant and other investors along with a loan from [redacted] Bank which was subsequently bought by [redacted].

34. The Appellant's investment of GB£1,350,000 in [redacted] in July 2007 was utilised for the purchase of 270 shares at GB£20 each and for 270 Loan Notes at GB£4,980 each which were held in trust for the Appellant by [redacted]. It was submitted that the Appellant was at all times the beneficial owner of the shares and loan notes.

35. In early 2015, it was submitted, the lender foreclosed on the loan and in 2015 [redacted] was liquidated. As a result, the Appellant's investment (along with the investments of all of the other investors in [redacted]) was lost save and except for a redemption by [redacted] of the Loan Notes held on behalf of the Appellant for GB£1.00 in total on 15 December 2015.

36. It was submitted that the Loan Notes constituted "*debts on security*" for the purposes of section 541 of the TCA 1997 and that the Appellant is therefore entitled to offset the losses incurred by her relating to the loan notes against chargeable gains which arise.

37. It was submitted that, the Appellant had not offset the losses sustained as a result of her [redacted] and Padstow investments against any other capital gains and that it is, therefore, open to her to offset the losses sustained against the gains made in relation to the sale of the Property in 2018.

Respondent's Submissions

38. The Respondent submitted that the Notice of Amended Assessment to CGT was raised following a protracted investigation and audit during which time the Appellant did not make any reference to a claim for a loss in relation to [redacted] or the Padstow property.

39. It was submitted that the Form 11 tax return for 2018 was returned by the Appellant in the context of a prompted disclosure during the course of an audit and that it did not contain any reference to the sale of the Property, the gain accrued as a result of the sale of the Property or any capital losses brought forward which the Appellant sought to rely on to offset against the gains accrued.

40. It submitted that the contested Notice of Amended Assessment to CGT was based on the following calculation:

Sale Price		€2,500,000
Estimated Purchase Price	€1,140,000	
Indexation Rate (2001)	x 1.087	
Estimated Purchase Price after Indexation		€1,239,180
Gain		€1,260,820
Less Annual Exemption		€1,270
Net Gain		€1,259,550

Tax at 33%		**€415,651**
Surcharge 10%		€41,565
Tax and Surcharge Liability		**€457,216**

41. It submitted that the contested Notice of Amended Assessment to CGT which was raised on 27 May 2021 had been raised without the Respondent including the stamp duty costs incurred by the Appellant on the purchase. As a result, the Respondent submitted a revised calculation on which it submitted it wishes to rely as follows:

Sale Price		€2,500,000
Estimated Purchase Price	€1,127,974	
Indexation Rate (2001)	x 1.087	
Estimated Purchase Price after Indexation		€1,226,108
Gain		€1,273,892
Less Annual Exemption		€1,270
Net Gain		€1,272,622
Tax at 33%		**€419,965**
Surcharge 10%		€41,997
Tax and Surcharge Liability		**€461,962**

42. The Respondent submitted that the Property had been purchased by the Appellant in 2001 as an investment. In that regard, the Respondent submitted that there is an expectation that proper books and records in relation to the investment made should have been kept by the Appellant.

43. In relation to the net proceeds of sale of the Property, the Respondent submitted that:

    43.1. The Property was sold in 2018 for €2,500,000.

    43.2. It does not accept that the 2018 sale price included contents to the value of €70,000. This is, it was submitted, in circumstances where the contract for the sale of the Property does not contain an amount for the value of the contents which were included in the sale. In addition, the Respondent submitted that the Appellant had not submitted any receipts, other documentary evidence or any oral evidence of the contents which she alleges were included in the sale. Furthermore, the Respondent submitted that the Appellant did not hold any insurance in relation to the contents of the Property.

    43.3. It agrees that the purchase of the Property incurred legal fees of €12,190;

    43.4. It agrees that the sale of the Property incurred legal fees of €20,624;

    43.5. It accepts that the appropriate indexation basis is 1.087;

    43.6. It disputes the Appellant's claim for enhancement expenditure on the Property of €305,000. It was submitted that it is accepted by the Respondent that, based on an article published at the time of the purchase of the Property in 2001, some works to the Property would have been required. However, it was submitted that, as no invoices or other evidence of the works or the extent of the works has been submitted, it is not possible to establish the extent and value of those works.

44. In relation to the Appellant's claim for capital losses, the Respondent disputes the Appellant's claim of a capital loss of €240,000 on the Padstow property in circumstances where no documentary evidence has been submitted in support of same.

45. In relation to the Appellant's claim of a loss relating to the [redacted] investment, the Respondent submitted that, prior to the day before the first day of the oral hearing, the Appellant had not made any claim in relation to any losses incurred which may be offset against the gains made on the sale of the Property. As a result, the Respondent has submitted that, pursuant to the provisions of section 959V of the TCA 1997 the Appellant is now out of time for the making of such a claim.

46. It was submitted that the Respondent accepts that €2,000,000 was transferred to the Bank by the Appellant for the purposes of investing in [redacted].

47. It is the Respondent's position that any losses incurred by the Appellant as a result of her investment in loan notes in [redacted] are not capital losses for the purposes of CGT.

Material Facts

48. It is long established that, in appeals against assessments to tax, the burden of proof rests on the taxpayer. Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168 at paragraph 50 stated that:

> *"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self-assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind 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."*

49. Charleton J. confirmed that the burden of proof rests on Appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 when he stated at paragraph 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*

Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."

50. This has most recently been confirmed by the Court of Appeal by McDonald J. in *JSS & Ors v A Tax Appeal Commissioner and the Criminal Assets Bureau* [2025] IECA 96 when he stated at paragraph 34 that:

"Both s. 949AK(1) of the 1997 Act and s. 50(6) of the 1970 Statute proceed on the basis that the assessment will stand unless it is established that the assessment is wrong. As outlined above, there is a long line of case law on both sides of the Irish Sea which has taken the consistent view that, under the provisions of these sections (and their respective predecessor provisions), the taxpayer bears the burden of demonstrating that a tax assessment is wrong..."

51. The standard of proof in tax appeals is the civil standard of the balance of probabilities, that is to say, the Appellant must establish that it is more likely than not that, in this appeal, the Notice of Amended Assessment to CGT raised by the Respondent in 27 May 2021 is incorrect.

Uncontested Material Facts

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

    52.1. The Appellant is a taxpayer who is resident and domiciled in Ireland.

    52.2. On [redacted] 2001, the Appellant purchased a property at [redacted].

    52.3. The Property was an investment and was not utilised as the Appellant's residence.

    52.4. The Appellant purchased the Property for €1,034,838.10.

    52.5. Stamp duty of €93,135.43 was paid by the Appellant on the purchase of the Property in 2001.

    52.6. Legal costs relating to the purchase of the Property were incurred by the Appellant in the amount of €12,190.

    52.7. On [redacted] 2018, the Appellant sold the Property for €2,500,000.

    52.8. Legal costs relating to the sale of the Property were incurred by the Appellant in the amount of €20,624.

52.9. The appropriate indexation basis is 1.087.

52.10. The Appellant made an investment of €2,000,000 in [redacted] in the form of 270 shares at GB£20 each and for 270 Loan Notes at GB£4,980 each which were held in trust for the Appellant by [redacted] which said company was liquidated in 2015.

52.11. The Appellant did not receive any payment relating to her shares in [redacted] and received a total payment GB£1.00 in relation to redemption of the Loan Notes which she held in [redacted].

52.12. As part of a prompted disclosure made by the Appellant in the context of an audit into her tax affairs, the Appellant submitted a Form 11 tax return for the year 2018 to the Respondent on 15 December 2020.

52.13. The Form 11 income tax return for 2018 submitted to the Respondent did not contain any information in relation to the disposal of the Property or relating to any previous capital losses which might have been available to the Appellant.

52.14. On 15 December 2020 a Notice of Assessment to CGT for 2018 was issued to the Appellant which showed the amount of chargeable gains arising as €0.00 and a balance of CGT due of €0.00.

52.15. On 27 May 2021, the Respondent issued a Notice of Amended Assessment to CGT for 2018 which showed an underpayment of tax of €457,216.00 which was comprised of €415,651.00 of CGT payable and €41,565.00 of a surcharge for the late submission of a return.

Contested Material Facts

53. The following material facts are contested:

53.1. The sale of the Property included an amount of €70,000 relating to contents.

53.2. Following the purchase of the Property, the Appellant expended an amount of €300,000 on works to improve the Property.

53.3. The Appellant experienced a capital loss of €240,000 relating to an investment in the Padstow property.

53.4. The loan notes acquired by the Appellant as part of her investment in [redacted] were “debts on security”.

The sale of the Property included an amount of €70,000 relating to contents:

54. The Appellant claims that included in the sale price of €2,500,000 was an amount of €70,000 relating to contents which were part of the sale of the Property. The Respondent disputes this claim.

55. In support of this claim, the Appellant has submitted a copy of the contract of sale for the Property which is dated [redacted] 2018. Section 2 of the "*Non-Title Information*" of the contract is entitled "*Contents*" and at section 2(a) it is indicated that contents are included in the purchase price. However, the section which asks "*If so, give Vendor's estimate of value*" is blank and no figure for the value of contents is assigned.

56. At the oral hearing, a list of contents which the Appellant claims was included in the sale of the Property was submitted. No evidence was adduced to the Commissioner in relation to the list or in relation to the contents included on the list. In addition, no receipts relating to the purchase of the individual items on the list were submitted by the Appellant.

57. The Commissioner notes that the Property was bought as an investment and the Appellant at no time resided in the Property.

58. In addition, the Commissioner notes that the Contract of Sale for the Property did not contain a list of the contents which were to be included in the sale nor did it ascribe any value to the contents which were to be included in the sale.

59. The burden of proof rests on the Appellant and the standard of proof is the balance of probabilities. The only documentation which the Appellant has submitted is a Contract of Sale which does not ascribe a value to the contents along with a list of contents which the Appellant claims was included in the sale of the Property without supporting receipts.

60. In these circumstances, the Commissioner considers that the best piece of documentary evidence which has been submitted by the Appellant is the Contract of Sale for the Property which is a document which was signed by both the Appellant as vendor and the purchaser of the Property in 2019.

61. The Commissioner does not consider that she can give any weight to the list of contents submitted by the Appellant in circumstances where the Commissioner has not received any evidence in relation to that list, whether oral or documentary.

62. As the Contract of Sale submitted which does not ascribe a value to the contents included in the sale and does not contain a list particularising the contents included in the sale, the Commissioner has not been put in a position whereby the contents and their value can be established.

63. The Commissioner, therefore, finds on the balance of probabilities that the Appellant has not discharged the burden of proof to establish that contents to the value of €70,000 were included in the sale of the Property.

64. Therefore, this material fact is not accepted.

Following the purchase of the Property, the Appellant expended an amount of €305,000 on works to improve the Property:

65. It was submitted that, following the purchase of the Property in 2001, the Appellant engaged the services of a named designer to assist with the upgrade of the Property which, it was claimed, involved rewiring and replumbing and other works to bring the Property up to an acceptable standard.

66. No evidence was adduced to the Commissioner in relation to this claimed expenditure on the Property. In addition, no documentation was submitted to support this claim.

67. It was open to the Appellant to contact the designer who it is claimed assisted in the claimed upgrade of the property to provide information in relation to the works or to give oral evidence to the Commissioner, however no documentation or evidence was received from the designer.

68. It was also open to the Appellant to submit photographs to establish the state of the Property at the time of purchase or at the time of sale. She did not.

69. In circumstances where the Commissioner has not received any evidence or documentation in relation to this claim, the Commissioner must find that the Appellant has not discharged the burden of proof to establish that improvement works to the value of €305,000 were carried out by her to the Property.

70. Therefore, this material fact is not accepted.

The Appellant experienced a capital loss of €240,000 relating to an investment in the Padstow property:

71. It was submitted by the Appellant that she had invested in a property in Padstow in the United Kingdom with her brother in the amount of €240,000. It was further submitted that, in circumstances where a receiver was appointed to the Padstow Property and where the Padstow Property was sold, the Appellant lost the entirety of her investment in the Padstow Property.

72. No evidence in relation to this claimed investment was adduced or submitted to the Commissioner. In addition, no evidence in relation to the claimed appointment of a

receiver to the property or in relation to the sale of the Padstow Property was adduced or submitted to the Commissioner.

73. It was open to the Appellant to submit evidence of the arrangement which she had with her brother in relation to the claimed investment. She did not.

74. It was open to the Appellant to submit evidence in relation to the appointment of a receiver to the Padstow Property. She did not.

75. In circumstances where the Commissioner has no information in relation to the address of the claimed investment in the Padstow Property, the date of the claimed investment or the date of the crystallisation of the claimed loss, the Commissioner must find that the Appellant has not discharged the burden of proof to establish that she experienced a capital loss relating to an investment in a property in Padstow in the United Kingdom.

76. Therefore, this material fact is not accepted.

The loan notes acquired by the Appellant as part of her investment in [redacted] were "debts on security":

77. The question which arises in this contested material fact is whether the loan notes acquired by the Appellant as part of her investment in [redacted] were debts on security within the meaning of the TCA 1997.

78. It is agreed between the parties that the Appellant made an investment of €2,000,000 in [redacted]. The exact date or nature of the investment has not been submitted to the Commissioner, however, documentation has been submitted which establishes that:

    78.1. On 17 July 2007, the Appellant signed an expression of intent with the Bank relating to an investment of GB£1,350,000 (€2,005,347.60 when converted using the quoted Central Bank of Ireland Euro / GB€ exchange rate for 17 July 2007 of 0.67320[2]) in [redacted].

    78.2. On 17 July 2007, the Appellant transferred a sum of €2,000,000 to a private banking account in the Bank held by the Bank for the purposes of co-mingling and investing the funds of investors in [redacted];

    78.3. On 11 February 2008, the Appellant signed an irrevocable commitment to invest GB£1,350,000 in [redacted];

[2] Available at https://www.centralbank.ie/statistics/interest-rates-exchange-rates/exchange-rates

78.4. On 2 February 2011, the Appellant entered into a shareholders agreement relating to her [redacted] investment.

79. No evidence has been adduced to the Commissioner relating to any of the documents which were submitted during the course of this appeal.

80. No documentation has been submitted by the Appellant which establishes the precise date or nature of the Appellant's investment in [redacted] in the form of her acquisition of the shares and / or loan notes. In addition, the Commissioner has not been provided with copies of the share certificates or of the loan notes which the Appellant acquired as a result of the investment.

81. The Commissioner notes that a one page letter from the Bank dated 13 August 2024 sets out, *inter alia*, that in July 2007 the Appellant invested GB£1,350,000 in [redacted] which said investment was applied to the purchase of 270 shares at GB£20 each and 270 loan notes at GB£4,980 each. No supporting documentation accompanied this letter.

82. Part 19 of the TCA 1997 contains the principal provisions relating to the taxation of chargeable gains and in particular section 541 of the TCA 1997 is entitled "*Debts*" and deals with the question of chargeable gains and losses in the context of debts held by creditors.

83. Subsection (1) of section 541 of the TCA 1997 provides that:

> *"(a) For the purposes of the Capital Gains Tax Acts but subject to paragraph (b), where a person incurs a debt to another person (being the original creditor), whether in the currency of the State or in some other currency, no chargeable gain shall accrue to that creditor or to that creditor's personal representative or legatee on a disposal of the debt.*
>
> *(b) Paragraph (a) shall not apply in the case of a debt on a security within the meaning of section 585."*

84. It is the Appellant's position that the loan notes held by her were debts on security. It is the Respondent's position that the loan notes were not debts on security.

85. No legal submissions were made by either party as to the law on debts on security.

86. The law in relation to identifying whether a debt held by a creditor is a debt on security has been considered by the Courts in Ireland. Morris J in *JJ Mooney (Inspector of Taxes) v Noel McSweeney* [1997] IEHC 59 (from here on referred to as "*Mooney v McSweeney*") considered whether a loan held constituted a debt on security.

87. The relevant facts in *Mooney v McSweeney* were that the major shareholder and director of a company advanced a loan to the company of IR£140,000 in circumstances where the company was in financial difficulty. A term of this loan was that the shareholder / director as loan holder had the right to convert the debt owed to him into company stock at a pre-determined price. The loan holder never sought to exercise this right and, when the company went into liquidation, he suffered the total loss of the sum loaned. When the loan holder made a profit on a separate transaction in respect of which CGT was assessed, he sought to claim an allowable loss on the loan advanced to the company, which was refused by the Revenue Commissioners. The matter came before the High Court by way of a Case Stated from the Circuit Court, and turned on the question of whether the loan was a debt on security which would have meant that the loss was an allowable loss and available to offset against CGT.

88. In the High Court, Morris J noted that under the Capital Gains Tax Act 1975, no chargeable gain could accrue on a simple debt. He observed[3] that the reason for this was that it did not have the potential to increase in value (though of course it could decrease on repayment). Furthermore, as the legislation required that gains and losses under capital gains tax be computed in the same way, no loss could accrue either.

89. This, however, did not apply in respect of a "debt on security" by reason of the provisions that are now contained in section 541(1)(a) of TCA 1997. In considering what constitutes a debt on security, Morris J regard to the view expressed by Lord Wilberforce in *Ramsay (W.T.) Ltd v IRC* [1982] AC 300 at 329 that such a debt is one "*… with added characteristics such as may enable [it] to be realised or dealt with at a profit*", or that has "*…such characteristics as enable it to be dealt in and, if necessary, converted into shares or other securities.*" Morris J held that these were the elements which identified a debt on a security.

90. Morris J found in of *Mooney v McSweeney* that:

> *"The pure loan is exempt from capital gains tax because it can never increase in value. With additional rights to convert it into stock, a debt on a security may appreciate in value and can be marketed at a profit. This is a clear distinction between the two."*

91. Morris J further found that:

> *"The essence of a loan on a security must be whether the additional 'bundle of rights' acquired with the granting of the loan, to use Wilberforce L.J.'s phrase, enhances the*

[3] At paragraph 26

loan so as to make it marketable and potentially more valuable than the value of the repaid loan upon repayment. This potential increase in value must not be illusory or theoretical. It must be realistic at the time when the loan and the rights are acquired by the lender."

92. Applying this to the facts in *Mooney v McSweeney*, the Court determined that the loan in question could be characterised as a debt on security on the grounds that the loan could have been offered, complete with the attaching rights and entitlements, for sale. Morris J also found that the fact that the borrowing company was ailing at the time the loan was advanced did not necessarily preclude it being marketable. While difficulty could arise in the search for a buyer, this could be the consequence of *"…local or transient commercial considerations*" that should not be a factor in a court's reasoning.

93. The question of debts on security was also considered by the Supreme Court in *Patrick J O'Connell (Inspector of Taxes) v Thomas Keleghan*, [2001] IESC 43 (from here on referred to as "*O'Connell v Keleghan*"). This case concerned a complex commercial transaction in which the shares in a company were purchased from a vendor by way of loan note. The vendor retained a right to convert the loan to shares, but Murphy J, giving the judgment of the Supreme Court, described this right as being "*extremely limited indeed*"[4]. Moreover, it was clear from the agreement in question that the loan note was not assignable to any third party. In finding that the vendor was not liable for capital gains tax, as the loan note was not a debt on security, the Court referred to the "*clearer guidance*" in *Mooney v McSweeney* on the definition of such a debt.[5]

94. It therefore falls to the Commissioner to consider whether:

    94.1. the loan notes acquired by the Appellant contained an additional bundle of rights at the time of acquisition and,

    94.2. if so, whether that bundle of rights enhanced the loan notes so as to make them marketable and potentially more valuable than the value of the repaid loan upon repayment.

95. As already set out, no documentation has been submitted to the Commissioner which establishes the precise date or nature of the Appellant's investment in [redacted] in the form of her acquisition of the shares and / or loan notes. In addition, the Commissioner

[4] At page 6
[5] *Ibid*

has not been provided with copies of the share certificates or of the loan notes which the Appellant acquired as a result of the investment.

96. The Commissioner notes that copies of a Shareholders Agreement dated 2 February 2011 and a Deed of Amendment to the Shareholders Agreement dated 2 February 2011 have been submitted. These documents are of no assistance to the Commissioner as they are not related to the acquisition of the loan notes by the Appellant nor are they contemporaneous to the acquisition of the loan notes which, pursuant to the documentation submitted, appear to have been acquired some time in 2007 or 2008. The Commissioner is in effect left in a vacuum with no relevant information as to the nature of the loan notes which the Appellant acquired.

97. As a result of the foregoing, the Commissioner must find that the Appellant has not established that the loan notes contained an additional bundle of rights at the time of acquisition and, as a result, the Appellant has not discharged the burden of proof to establish that the loan notes which she acquired were debts on security within the meaning of the TCA 1997.

98. Therefore, this material fact is not accepted.

Findings of Material Facts

99. For clarity and completeness, the Commissioner has made the following findings of material facts:

    99.1. The Appellant is a taxpayer who is resident and domiciled in Ireland.

    99.2. On 6 November 2001, the Appellant purchased a property at [redacted].

    99.3. The Property was an investment and was not utilised as the Appellant's residence.

    99.4. The Appellant purchased the Property for €1,034,838.10.

    99.5. Stamp duty of €93,135.43 was paid by the Appellant on the purchase of the Property in 2001.

    99.6. Legal costs relating to the purchase of the Property were incurred by the Appellant in the amount of €12,190.

    99.7. On [redacted] 2018, the Appellant sold the Property for €2,500,000.

99.8. Legal costs relating to the sale of the Property were incurred by the Appellant in the amount of €20,624.

99.9. The appropriate indexation basis is 1.087.

99.10. The Appellant made an investment of €2,000,000 in [redacted] in the form of 270 shares at GB£20 each and for 270 Loan Notes at GB£4,980 each which were held in trust for the Appellant by [redacted] which said company was liquidated in 2015.

99.11. The Appellant did not receive any payment relating to her shares in [redacted] and received a total payment GB£1.00 in relation to redemption of the Loan Notes which she held in [redacted].

99.12. As part of a prompted disclosure made by the Appellant in the context of an audit into her tax affairs, the Appellant submitted a Form 11 tax return for the year 2018 to the Respondent on 15 December 2020.

99.13. The Form 11 income tax return for 2018 submitted to the Respondent did not contain any information in relation to the disposal of the Property or relating to any previous capital losses which might have been available to the Appellant.

99.14. On 15 December 2020 a Notice of Assessment to CGT for 2018 was issued to the Appellant which showed the amount of chargeable gains arising as €0.00 and a balance of CGT due of €0.00.

99.15. On 27 May 2021, the Respondent issued a Notice of Amended Assessment to CGT for 2018 which showed an underpayment of tax of €457,216.00 which was comprised of €415,651.00 of CGT payable and €41,565.00 of a surcharge for the late submission of a return.

Analysis

100. Section 31 of the TCA 1997 provides that CGT shall be charged on

"… the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting -

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

(b) in so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses

accruing to that person in any previous year of assessment (not earlier than the year 1974-75).”

101. It is not in dispute, and the Commissioner has found as a material fact, that the Appellant purchased the Property in 2001 for €1,034,838.10. It is agreed that the indexation rate relating to the Property is 1.087, therefore the purchase price of the Property following indexation is €1,124,869.01.

102. It is also not in dispute between the parties that the Appellant sold the Property in 2018 for €2,500,000.

103. Section 552 of the TCA 1997 is entitled “*Acquisition, enhancement and disposal costs*” and provides that the allowable expenses for the purposes of calculating CGT shall be restricted to:

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

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

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

104. In relation to the allowable expenses for the acquisition of the Property, the Appellant has succeeded in establishing that she incurred the following allowable expenses totalling €105,325.43:

104.1. Stamp duty of €93,135.43;

104.2. Legal costs of €12,190.

105. In relation to allowable expenses for enhancing the value of the Property or in relation to the maintenance of the Property, the Appellant has not discharged the burden of proof to establish any such costs.

106. In addition, the Appellant has not succeeded in establishing that the sale price of the Property contained any amount in relation to contents.

107. In relation to the allowable expenses for the disposal of the Property, the Appellant has succeeded in establishing that she incurred €20,624 in legal fees relating to the sale.

108. The Commissioner notes that additional costs must have arisen for the Appellant in relation to the sale of the Property such as estate agent fees, however in circumstances where no evidence has been submitted to the Commissioner in that regard, she cannot assign any allowable expense amount to same.

109. The Commissioner therefore finds that the correct calculation of CGT on the disposal of the Property by the Appellant is as follows:

Sale Price		€2,500,000
Purchase Price	€1,034,838.10	
Indexation Rate (2001)	x 1.087	
Purchase Price after Indexation		€1,124,869.01
Less Allowable Expenses of Acquisition	€105,325.43	
Less Allowable Expenses of Sale	€20,624	
Gain		€1,249,181.56
Less Annual Exemption		€1,270
Net Gain		€1,247,911.56
Tax at 33%		**€411,810.81**

110. The Commissioner notes that in her Statement of Case, the Appellant referred to wasting chattels. At the oral hearing, the claim made in relation to wasting chattels was withdrawn

by the Appellant and the Commissioner has therefore not made any reference to same in this Determination.

111. In relation to any claim relating to a capital loss attributable to the acquisition and disposal of the shares in [redacted] which the Appellant might wish to make, the Commissioner has not been provided with any evidence of whether the Appellant has made a previous claim to offset any such loss which may have arisen against any capital gains which the Appellant may have incurred since 2015.

112. In those circumstances, the Commissioner has not been put in a position to include an allowance for a capital loss which may have arisen relating to the sale and disposal of the shares in [redacted] in the calculation of CGT relating to the sale of the Property.

Determination

113. The Commissioner determines that the Appellant has succeeded in part in this appeal in establishing that she has been overcharged. She has succeeded in establishing that she incurred some allowable expenses relating to the purchase and sale of the Property as set out in this determination.

114. The Commissioner determines that the Notice of Amended Assessment to CGT for the year 2018 issued by the Respondent on 27 May 2021 shall be reduced pursuant to the provisions of section 949AK(1)(a) of the TCA 1997 to reflect the following:

Sale Price		€2,500,000
Purchase Price	€1,034,838.10	
Indexation Rate (2001)	x 1.087	
Purchase Price after Indexation		€1,124,869.01
Less Allowable Expenses of Acquisition	€105,325.43	
Less Allowable Expenses of Sale	€20,624	
Gain		€1,249,181.56
Less Annual Exemption		€1,270

Net Gain		€1,247,911.56
Tax at 33%		**€411,810.81**

115. 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.

116. The Commissioner has no jurisdiction in relation to the imposition of a surcharge as set out in section 1084 of the TCA 1997 and therefore makes no determination in relation to this aspect of the contested Notice of Amended Assessment to CGT.

Notification

117. 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

118. 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
14 January 2026

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