Between

101TACD2022

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") and section 67 of the Capital Acquisitions Tax Consolidation Act 2003 ("CATCA 2003") brought on behalf of ("the Appellant") against a Notice of Amended Assessment to Capital Acquisitions Tax ("CAT") issued by the Revenue Commissioners ("the Respondent") on 25 July 2019.

2. The Notice of Amended Assessment is in relation to the period 1 September 2016 to 31 August 2017 and is in the sum of €137,123.80. This is based on the net taxable value of the benefit being €377.750. As the sum of €44,479 was paid by the Appellant, the total amount of CAT payable was in the sum of €92,644.80.

3. A further Notice of Amended Assessment to CAT issued on 6 April 2020, resulting in a reduction in the sum assessed. The amended assessment was in the sum of €101,911.00 (including a sum of €9,264.00 in respect of a 10% surcharge for late submission of the return) and based on a net taxable value of the benefit being €280,750. The Appellant had paid CAT in the sum of €51,774.00, which resulted in the total amount payable in the sum

of €50,137.00. It is this amount that is in dispute and which is the subject matter of this appeal.

4. The appeal relates to sums received by the Appellant from ██████ ("the disponer"), who died on ██████. The Appellant received two gifts of €150,000 from the disponer and the total amount the Appellant received from the disponer was in the sum of €300,000. The Appellant accepts that the second amount of €150,000 gifted to her by the disponer, is subject to CAT.

5. On 15 August 2019, the Appellant duly appealed to the Commission. The oral hearing took place remotely before the Commissioner on 1 June 2022. The Commissioner heard evidence and submissions on behalf of the Appellant and heard submissions on behalf of the Respondent.

Background

6. On both 24 March 2017 and 13 April 2017, the Appellant received gifts of €150,000 from the disponer. Between the years 2003 and 2017, the Appellant and the disponer cohabited and had one daughter, who was born in 2003. During that time, the Appellant and the disponer resided together with their daughter and the Appellant's two other children.

7. The payments received by the Appellant from the disponer, were classified by the Respondent as gifts in accordance with section 5 CATCA 2003. However, as both gifts were made within 2 years of the date of death of the disponer, the Respondent deemed the gifts to be inheritances, within the meaning of section 3(1)(c) CATCA 2003.

8. The Appellant submits that the first payment of €150,000 was not a gift but rather constituted the reimbursement of cash advances made by the Appellant to the disponer (including the repayment of golf membership fees paid directly by the Appellant on behalf of the disponer) and the reimbursement of payments made by the Appellant to discharge family and household expenses over the duration of their relationship. The Appellant argues that it was always the intention of the disponer that these sums be repaid to her by the disponer.

9. By way of email dated 24 May 2022, the Appellant's Agent wrote to the Respondent stating that "in essence we are claiming that over the period 2003-2017 [the Appellant] paid the following amounts for the following costs/loans:

Groceries	*86,521*
Household	*68,875*
Loans to ██	*43,600*
Costs for ██	*82,092"*

10. The Appellant argues that she has been wrongfully assessed on the first payment of €150,000, as the gift falls outside the scope of CAT. The Appellant argues that in respect of the sums advanced to the disponer in the amount of €43,600, a resulting trust was created in favour of the Appellant. In addition, the remaining sums represent certain payments made by the disponer for household expenses and to support and maintain the children, which the Appellant argues in her Statement of Case, are exempt under section 82(2) CATCA 2003. The Appellant submits that the full sum should therefore be exempt due to the provisions of section 10(1) CATCA 2003, as the sums were repayments of money owed to the Appellant by the disponer and there was an oral agreement in place for the repayment of such sums.

11. The Respondent submits that the first sum of €150,000.00 is fully chargeable to CAT, on the basis that the gift of €150,000, made by the disponer to the Appellant on 24 March 2017, was made within 2 years of his death. The Respondent argues that the Appellant "*has not produced any corroboratory evidence whatsoever to prove that the sums totalling €43,600 represented a loan(s) advanced by her to the disponer. There is no contemporaneous loan documentation evidencing any legally enforceable agreement between the parties*".

12. Moreover the Respondent argues in its Outline of Arguments dated 27 May 2021 that "*in the context of the submissions made by the Appellant it must be noted that there is a well-established presumption against contractual relations in family, domestic and social situations and the law does not generally accept or recognise the creation of legal relationships in relation to family, domestic or friendship matters*".

13. Further the Respondent argues that the Appellant's reliance on the provisions of section 82(2) CATCA 2003 appears misplaced and has no relevance to the subsequent payment made to the Appellant by the late disponer. It was the Appellant who discharged the expenses for support and maintenance of the family over the years.

Legislation and Guidelines

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

    Section 3 of the Capital Acquisitions Tax Consolidation Act 2003, Meaning of "on a death", provides:-

    (1) In this Act, "on a death", in relation to a person becoming beneficially entitled in possession, means—

    ……..

(c) under a disposition where the date of the disposition is on or after 1 April 1975, and within two years prior to the death of the disponer.

15. Section 9 of the Capital Acquisitions Tax Consolidation Act 2003, Charge of inheritance tax, provides:-

“A capital acquisitions tax, to be called inheritance 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 inheritance taken by a successor”.

16. Section 10 of the Capital Acquisitions Tax Consolidation Act 2003, inheritance deemed to be taken, provides:-

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

17. Section 28 of the Capital Acquisitions Tax Consolidation Act 2003, taxable value of a taxable gift or inheritance, provides:-

(1) In this section, “incumbrance-free value”, in relation to a taxable gift or a taxable inheritance, means the market value at the valuation date of the property of which the taxable gift or taxable inheritance consists at that date, after deducting any liabilities, costs and expenses that are properly payable out of the taxable gift or taxable inheritance.

(2) Subject to this section (but except where provided in section 89), the taxable value of a taxable gift or a taxable inheritance (where the interest taken by the donee or successor is not a limited interest) is ascertained by deducting from the incumbrance-free value of such a taxable gift or a taxable inheritance the market value of any bona fide consideration in money or money’s worth, paid by the donee or successor for the gift or inheritance, including—

(a) any liability of the disponer which the donee or successor undertakes to discharge as that donee or successor’s own personal liability, and

(b) any other liability to which the gift or inheritance is subject under the terms of the disposition under which it is taken, and the amount so ascertained is the

taxable value, but no deduction shall be made under this subsection in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.

(3)Where a liability (other than a liability within the meaning of subsection (9)) for which a deduction may be made under subsection (1) or (2) is to be discharged after the time when it is to be taken into account as a deduction under either of those subsections, it is valued for the purpose of making such a deduction at its current market value at the time when it is to be so taken into account.

(4) The taxable value of a taxable gift or a taxable inheritance, where the interest taken by the donee or the successor is a limited interest, is ascertained as follows—

(a) the value of the limited interest in a capital sum equal to the incumbrance-free value is ascertained in accordance with the Rules contained in Schedule 1, and

(b) from the value ascertained in accordance with paragraph (a) a deduction is made in respect of the market value of any bona fide consideration in money or money's worth paid by the donee or the successor for the gift or the inheritance and the amount remaining after such deduction is the taxable value, but no deduction is made under this paragraph in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.

(5) A deduction shall not be made under this section—

(a) in respect of any liability the payment of which is contingent on the happening of some future event, but if the event on the happening of which the liability is contingent happens and the liability is paid, then, on a claim for relief being made to the Commissioners and subject to the other provisions of this section, a deduction is made in respect of the liability and such adjustment of tax as is appropriate is made; and such adjustment is made on the basis that the donee or successor had taken an interest in possession in the amount which is to be deducted for the liability, for a period certain which was equal to the actual duration of the postponement of the payment of the liability,

(b) in respect of any liability, costs or expenses in so far as the donee or successor has a right of reimbursement from any source, unless such reimbursement can not be obtained,

(c) in respect of any liability created by the donee or successor or any person claiming in right of the donee or successor or on that donee or successor's behalf,

(d) in respect of tax, interest or penalties chargeable under this Act in respect of the gift or inheritance, or of the costs, expenses or interest incurred in raising or paying the same,

(e) in respect of any liability in so far as such liability is an incumbrance on, or was created or incurred in acquiring, any property which is comprised in any gift or inheritance and which is exempt from tax under any provision of this Act or otherwise,

(f) in the case of any gift or inheritance referred to in section 6(1)(c), 6(2)(d), 11(1)(b) or 11(2)(c)in respect of—

(i) any liability, costs or expenses due to a person resident outside the State (except in so far as such liability is required by contract to be paid in the State or is charged on the property which is situate in the State and which is comprised in the gift or inheritance), or

(ii) any liability, costs or expenses in so far as the same are charged on or secured by property which is comprised in the gift or inheritance and which is not situate in the State, except to the extent that all the property situate outside the State and comprised in the gift or inheritance is insufficient for the payment of the liability, costs or expenses,

(g) for any tax in respect of which a credit is allowed under section 106 or 107.

(5A) Notwithstanding section 57(3), relief shall be given under subsection (5)(a) on a claim which shall be made within 4 years after the liability referred to in that paragraph has been paid.

(6) In the case of a gift or inheritance referred to in subsection (5)(f), any deduction to be made under subsection (2) or (4)(b) is restricted to the proportion of the consideration which bears the same proportion to the whole of the consideration as

the taxable gift or taxable inheritance bears to the whole of the gift or the whole of the inheritance.

(7) A deduction shall not be made under this section—

(a) more than once for the same liability, costs, expenses or consideration, in respect of all gifts and inheritances taken by the donee or successor from the disponer, or

(b) for any liability, costs, expenses or consideration, a proportion of which is to be allowed under section 89(2)(ii) or (iii) in respect of a gift or inheritance taken by the donee or successor from the disponer.

(8)Where a taxable gift or a taxable inheritance is subject to a liability within the meaning of subsection (9), the deduction to be made in respect of that liability under this section shall be an amount equal to the market value of the whole or the appropriate part, as the case may be, of the property, within the meaning of section 5(5).

(9) For the purpose of subsection (8), "liability", in relation to a taxable gift or a taxable inheritance, means a liability which deprives the donee or successor, whether permanently or temporarily, of the use, enjoyment or income in whole or in part of the property, or of any part of the property, of which the taxable gift or taxable inheritance consists.

(10) Where—

(a) bona fide consideration in money or money's worth has been paid by a person for the granting to that person, by a disposition, of an interest in expectancy in property, and

(b) at the coming into possession of the interest in expectancy, that person takes a gift or an inheritance of that property under that disposition, the deduction to be made under subsection (2) or (4)(b) for consideration paid by that person is a sum equal to the same proportion of the taxable value of the taxable gift or taxable inheritance (as if no deduction had been made for such consideration) as the amount of the consideration so paid bore to the market value of the interest in expectancy at the date of the payment of the consideration.

(11) Any deduction, under this section, in respect of a liability which is an incumbrance on any property, is, so far as possible, made against that property.

18. Section 82(2) of the Capital Acquisitions Tax Consolidation Act 2009, Exemption of certain receipts, provides:-

(2) Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponer of money or money's worth—

(a) by—

(i) the spouse, civil partner, child or child of the civil partner of the disponer, or

(ii) a person in relation to whom the disponer stands in loco parentis, for support, maintenance or education, or

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

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

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

Submissions

Appellant

19. The Appellant was represented by her Tax Agent, [redacted], who made the following submissions:-

(i) This appeal relates to 3 grounds, namely that (i) the entire sum of €150,000 should be excluded from CAT, due to the provisions of section 10(1) CATCA 2003 (ii) the sum of €43,600 that the Appellant advanced to the disposer should be excluded from the provisions of CAT, as a resulting trust was created in favour of the Appellant, and (iii) the assessment raised by the Respondent is invalid.

(ii) The onus is not on the Appellant, but on the Respondent to prove that the payment comes within the charge to tax. Reference was made to various bills and receipts, in particular, to credit card statements of the disponer which have been linked to the Appellant's bank account statements. He argued that this clearly illustrates that the

Appellant provided the funds to the disponer to reduce the balances and that there was an agreement in place to refund the sums to the Appellant, once the disponer had access to his pension entitlements.

(iii) In relation to the sum of €43,600, which was advanced by the Appellant to the disposer, banking codes have been submitted and show that payments were made by the Appellant. For example, the sum of €7,200 was paid to discharge golf membership fees. The Agent submitted that the sum of €43,600 created a resulting trust in favour of the Appellant, when the Appellant advanced that sum to the disponer and that the creation of a resulting trust is recognised in Irish law. Reference was made to the decision of the Supreme Court in *Stanley v. Kieran* [2011] IESC 19 (unreported, Supreme Court, 7th June, 2011) ("*the Stanley decision*") in particular to the dicta of Denham J. at para. 37

> "*The evidence of the Appellant was that he provided the money to purchase Brownsbarn House and the lands. There was no evidence contradicting that fact. Indeed the Respondent agreed that this was so. The High Court held:*
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> > *"I am satisfied on the evidence that the [Appellant] provided the entire consideration of IR235,000 for the acquisition of Brownsbarn House and lands now registered on Folio 4444F. In the absence of evidence to contradict the [Appellant's] evidence on this point, I also accept that he provided the purchase money to acquire the lands registered on Folio 18341F. Those facts alone, in the absence of a contest as to what the [Appellant] intended in purchasing the properties in the names of the [company] and the [Respondent], would give rise to the presumption of a resulting trust in favour of the [Appellant] in relation to the lands registered on both folios."*
>
> *I would affirm this finding. On the facts the presumption of a resulting trust in favour of the Appellant arose"*

(iv) It was argued that the facts of this decision relate to cohabitees, who were not married and that funds advanced by the Appellant for the purchase of a property created a resulting trust in favour of the Appellant.

(v) The Notices of Amended Assessment raised by the Respondent are invalid. The valuation date is incorrect, the Appellant's PPSN is incorrect, in addition to the date of the gift being incorrect. Therefore, the assessments are void.

20. The Appellant gave the following evidence in support of her appeal:-

(i) The Appellant set out the history of her relationship with the disposer and that in 2003 they had a daughter. Further, the Appellant mentioned that both she and the disposer had children from their previous marriages. She stated she had two children, aged [redacted] and [redacted].

(ii) During their relationship, the disponer resided in the dwelling where she lived with her two young children. She submitted that the disponer was a traditional man who always insisted on repaying any sums of money she provided to him by way of loans. She stated that following his diagnosis with a terminal illness in 2017, the disponer proceeded to try to calculate the sums due and owing to the Appellant, over the course of their relationship.

(iii) She mentioned that during their relationship, many conversations took place in relation to the advances of money to the disponer and that it was agreed that his pension was a means to repay those sums to her upon his retirement, as he was entitled to a lump sum benefit. She maintained that the first gift of €150,000 was the repayment of loans in the sum of €43,600 and sums of money due to her, having split equally the running costs of the household and provision for the children during their relationship. She stated that there were significant costs running a household where five people resided.

(iv) Under cross-examination, she accepted that the father of her two children from her previous marriage, made payments in the sum of €200 per month and that they started in or around 2005 and ceased in or around 2014. She mentioned that the disponer had considerable expenses from his previous marriage and that she would often provide loans to him when needed, for example, to clear a credit card balance or an overdraft.

(v) She stated that it was agreed that the household costs should be split equally, but the disponer was not always in a position to do that. When asked how the sum would be calculated, she stated that it was not an exact science. She mentioned that over the years, many conversations took place, such that the disponer would be entitled to a lump sum pension payment of in or around €200,000, which he would use to repay her the sums of money, she had advanced to him. She stated that the disposer was due to retire at the age of 63.

(vi) The Appellant accepted that these conversations were not deduced to writing and there is no written agreement or terms of loan. She accepted that it was vague in relation to the day-to-day costs. However, she did not accept that it was vague in relation to what she would have been entitled to.

(vii) The Appellant accepted that the disposer made both monthly payments and lump sum payments to her between the periods 2003 to 2007. She accepted that the total monthly payments made by the disposer were in the region of €119,450 and that the total lump sum payments made, and which varied between €2,500 up to €7,000, amounted to €78,900 over the requisite period. In addition, she accepted that the total monthly and lump sum payments paid by the disponer for the period 2003 to 2017, was in or around €198,350.

(viii) The Appellant was asked if she agreed that the sum she was seeking of €162,344 was less than what the disponer paid to her, being €198,350 and that in fact, over the period, he had paid in excess of what she said he owed her? In response to the question, she stated that there was no dispute that he did not contribute to the household, but that it was not 50:50 and that the sum that was owed to her was in around €100,000. She argued that the exercise of forensically piecing together expenditure over the period, showed that there was a deficit to be paid to her.

Respondent

21. Counsel for the Respondent made the following submissions:

(i) That the burden of proof is on the Appellant in a tax appeal and that the law is clear in relation to this. Reference was made to the decision of Charlton J. in *Menolly Homes Ltd v Appeal Commissioners and another,* [2010] IEHC 49 ("*Menolly Homes*").

(ii) That the law is also clear in relation to statutory interpretation of tax statutes and reference was made to the decision of *Bookfinders Ltd v. The Revenue Commissioner* [2020] IESC 60 ("*Bookfinders*"). Reference was made to section 3 CATCA 2003 and that a gift becomes an inheritance if made within 2 years of the date of death of a disponer.

(iii) The jurisdiction of an Appeal Commissioner is set out in section 949AK of the TCA 1997. The Notice of Amended Assessment was specifically amended by the Respondent under section 49(2) CATCA 2003, at the request of the Appellant's Agent as set out in correspondence dated 5 March 2020 and acknowledged by the Appellant's Agent on 13 May 2020. Reference was made to the decision of the Court of Appeal in *Lee v Revenue Commissioners* [IECA] 2021 18 ("the *Lee* decision") and that an Appeal Commissioner does not have jurisdiction to determine the validity of a Notice of Assessment.

(iv) There is no agreement that would satisfy the requirements of any intention to create legal relations between the parties. There is nothing in writing and based on the evidence of the Appellant, while discussions may have taken place about when the disponer would receive his pension and what would happen to his pension, the terms were entirely vague and unclear and could not possibly constitute any form of legal agreement between the parties.

(v) The sums paid by the disponer to the Appellant in the period in question, namely 2003 to 2017, total €198,350 and based on the Appellant's own calculations, she states his contribution should have been in the sum of €162,244. Therefore, to March 2017, the payments made by the disponer over those years, were far in excess of what the Appellant argues she was owed by him. The Appellant could not have sued the disponer on foot of such vague agreements and that this is a domestic situation, with no contract. Further, any intention to create legal relations was absent.

(vi) The *Stanley* decision referred to by the Appellant can be distinguished on its facts and related to a tangible asset i.e. a property. In support of the Respondent's contention that there was no agreement or intention to create legal relations between the Appellant and the disponer, reference was made to the following decisions namely, *Jones v Padavatton* [1969] 1 W.L.R. 328, *Balfour v Balfour* [1919] 2 K.B. 571 at p.578 and *Coleman v Mullen* [2011] 4 IR 603 [2011] IEHC 179. It was argued that there is no evidence that the Appellant would not have stepped in to assist the disponer with his finances, even if promises were not made in respect of his pension. Reference was made to the decision of Hogan J. in *Coleman* at page 265 where he stated "*If a promisee would have acted in a similar way even without the promise sought to be in force, an absence of legal intent could be inferred*".

Material Facts

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

(i) The Appellant and the disponer were residing together as cohabitees during the period 2002 to 2017.

(ii) The Appellant and the disponer had one daughter during their relationship.

(iii) The Appellant had two children from her previous marriage who resided with the Appellant and the disponer during the period 2002 to 2017.

(iv) The disponer resided at the Appellant's residence during their relationship from in or around 2002 to 2017.

(v) The disponer made both monthly and lump sum payments to the Appellant from in and around 2002 to 2017. The total sum paid by the disponer to the Appellant was €198,350. This is not disputed by the Appellant.

(vi) The Appellant's husband from her previous marriage made frequent payments to the Appellant in the sum of €200.00 per month. This is not disputed by the Appellant.

Analysis

23. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of Menolly Homes at para. 22, Charleton J. stated

> *"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".*

24. The Appellant in this appeal is claiming an exemption from CAT and the onus is on the Appellant to show that some exemption or relieving provision applies to the gifts made to her by the disponer. The principles of statutory interpretation as they apply to tax legislation are well settled. The Commissioner is cognisant of the recent decision of McDonald J. in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") wherein he reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at para. 74

> *"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*
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> > *(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

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

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

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

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

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

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

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

25. The Commissioner is of the view that this is the most recent decision of the Courts in this jurisdiction, in relation to the approach to be taken to statutory interpretation and as such, is authoritative in this regard. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. In addition, as an exemption to the liability to pay tax has been sought, therefore, an exemption must be strictly construed.

26. With the aforementioned approach in mind, the Commissioner has considered the clear and cogent arguments of both parties. The Appellant's appeal relates to 3 grounds. The Appellant argues that (i) the gift of €150,000 represents the reimbursement of cash advances from the Appellant to the disponer and payments made by the Appellant to discharge family and household expenses, (ii) the payment totalling €43,600 created a resulting trust in favour of the Appellant and (iii) the Assessments raised by the Respondent are invalid.

27. Before addressing the competing arguments in relation to whether the payment of €150,000 is exempt from the provisions of CAT, the appropriate starting point is to address the Appellant's argument in relation to the Notices of Amended Assessment being invalid, as it relates to the jurisdiction of an Appeal Commissioner to determine such an argument.

Jurisdiction of an Appeal Commissioner and the validity of the Notices of Amended Assessment

28. The statutory scheme under section 949 of the TCA 1997 provides for an appeal from a decision of the Respondent to the Commission. It was the intention of the Oireachtas that a body such as the Commission, which has specialist knowledge in the area of taxation, would deal with such appeals. The statutory scheme provides for an appeal to the High Court on a point of law only. Historically, the Circuit Court was the Appeal Court following a determination of the Commission, however, this was amended by the Finance (Tax Appeals) Act 2015. On 21 March 2016, the Tax Appeals Commission was established and the new regime for the processing of tax appeals entered into force. Section 10 of the Finance (Tax Appeals) Act 2015 specifically provides that the Commission and its members shall be independent in the performance of their functions. Section 949AK of the TCA 1997 sets out the powers of an Appeal Commissioner.

29. The Commissioner notes the Appellant's arguments in relation to the Notices of Amended Assessment being invalid and accordingly, that they should be declared void. However, the scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; the *Lee* decision*, Stanley v The Revenue Commissioners* [2017] IECA

279*, The State (Whelan) v Smidic* [1938] 1 I.R. 626*, Menolly Homes and the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be.

30. In the *Lee* decision, Murray J. considered the dicta of Charlton J. in *Menolly Holmes* at para.52

    "..*in analysing this decision it seems to me to be important to observe that while Charlton J. speaks at points of powers to "strike down" the assessment, I do not understand the argument as advanced by the taxpayer in that case to have suggested that the supervisory jurisdiction vested in the High Court over statutory bodies had been transferred in the case of assessments to tax to the Appeal Commissioners. Whatever the correct analysis of the jurisdiction of the latter, there is no question of it extending to enable the Commissioners to issue declarations of invalidity of any kind. That is a function vested in the Courts*".

31. Accordingly, the jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on assessments having been compromised or otherwise vitiated in law, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

The Assessment to CAT

32. The Commissioner notes the Appellant's evidence that the first gift of €150,000 represents the reimbursement by the disponer of certain cash advances and family and household expenses and thus is exempt from CAT. The Appellant provided detailed testimony as to the spending habits of the disponer and the expenses incurred during their relationship, related to the running costs of the household and caring for three children. In addition, the Commissioner notes the testimony of the Appellant, such that the disponer was a traditional man who repeatedly stated his intention to repay any sums of money provided and to ensure that household expenses were split equally, once he became entitled to a lump sum payment as part of his pension entitlements.

33. The Appellant has submitted schedules of payments and voluminous documentation in the form of bank statements and receipts (where available) to support her arguments in relation to the loans advanced and outlays incurred. It is clear to the Commissioner that the Appellant has spent a considerable amount of time forensically preparing such

documentation in support of her appeal and the Commissioner is grateful to the Appellant for such a fulsome picture of her finances during the requisite period. In addition, the Commissioner notes the email of 24 May 2022, from the Appellant's Agent, to the Respondent detailing the loans advanced and the costs incurred, as being the most recent figures relied on.

34. The Appellant argues that a resulting trust was created in favour of the Appellant in relation to the loans advanced to the disponer in the sum of €43,600. The Commissioner has considered in detail the decision relied upon by the Appellant in this regard, namely the *Stanley* decision. The Appellant's Agent argued that "*resulting trusts can be said to arise by implication and are found on the unexpressed but presumed intention of the settlor*". The Respondent sought to distinguish this decision on the basis that the case related to the provision of funds for the purchase of a property, something tangible, rather than the creation of a trust over the provision of sums of money.

35. Further the Appellant has argued in her Statement of Case that the sums expended on groceries, the household and the costs associated with the upbringing of their daughter should be exempt from CAT under the provisions of section 82(2) CATCA 2003, as being provision of support and maintenance. As set out in detail above, an exemption to tax must be strictly construed and it follows therefrom, that the Appellant must fall squarely within the exemption provided for, in order to avail of same.

36. The Respondent argues that there is a well established presumption against contractual relations in family, domestic and social situations and the law does not generally accept or recognise the creation of legal relationships in relation to family, domestic or friendship matters, unless there was a clear intention to create legal relations. The Respondent argues that that any intention to create legal relations between the Appellant and the disponer was absent. Moreover, the Respondent argues that in relation to the sum of €43,600 (part of the alleged loan relates to a golf membership fee of €7,200.00 paid by the Appellant) there is no contemporaneous loan documentation evidencing any legally enforceable agreement between the Appellant and the disponer and further, that no resulting trust is created. The Respondent submits that any alleged contract between the Appellant and the disposer was made without the necessary contractual intent and was in effect normal domestic family relations or arrangements.

37. The Commissioner has considered the decisions relied on by both parties. The Commissioner has also had regard to the Appellant's arguments why the decisions relied upon by the Respondent should be distinguished from the circumstances of the Appellant's appeal.

38. The Commissioner has considered the submissions made on behalf of both parties, in addition to the evidence adduced in this appeal. In relation to the evidence that the sum of €43,600 was in effect a loan provided by the Applicant to the disponer and thus, created a resulting trust in favour of the Appellant, the Commissioner is satisfied that the evidence does not support such an argument. Generally, resulting trusts arise where there has been an apparent gift of property. A resulting trust arises by implication and is based on the presumed intention of the parties to a transaction. It is created in order to reflect those intentions and is a mechanism by which fairness is achieved.
39. The Commissioner listened to the Appellant's detailed evidence in relation to the Appellant and disponer's financial circumstances and having regard to the evidence, both documentary and oral, the Commissioner does not accept that a resulting trust was created when the Appellant discharged certain loans of the disponer and golf club membership fees. The Commissioner considers it noteworthy, that regular lump sum payments (in addition to monthly payments), not indiscriminate in terms of their amounts, were made by the disponer to the Appellant over the period. Accordingly, in all the circumstances, the Commissioner is not satisfied that the evidence supports the creation of a resulting trust, in relation to the sum of money in the amount of €43,600, such that it is therefore exempt from CAT.
40. Further, the Commissioner has considered the arguments that the whole gift of €150,000 represents the reimbursement by the disponer of certain cash advances or loans and family and household expenses and thus is exempt from CAT. There exists no formal loan documentation or at a minimum some evidence deducing the alleged loans to writing. The Commissioner does not accept that there was an oral agreement between the Appellant and the disponer, to repay the loans and that all of the constituent ingredients for a valid contract have been met, namely offer, acceptance and consideration. The Commissioner notes the dicta of Hogan J in *Coleman* where it was held that "*there must be clear evidence of an intention to create legal relations….in the absence of any intention to create legal relations, the plaintiff is not entitled to maintain her claim for quantum meruit against the estate….*". The Commissioner accepts as credible the evidence of the Appellant that the disponer wanted to contribute equally to the household. In fact, having regard to the evidence of amounts paid by the disponer over the requisite period, he did contribute substantially to the Appellant and the household, by way of monthly and lump sum payments. Accordingly, the Commissioner is not satisfied that the conversations that took place, had the intention to create legal relations or that any promises as such, were intended to have legal consequences.

41. As regards the Appellant's argument in her Statement of Case, that the balance of the gift (having deducted €43,600 due to a resulting trust being created) is exempt from CAT in accordance with provisions of section 82(2) CATCA 2003, the Commissioner is satisfied that the provisions do not apply to the circumstances of this appeal. The provisions of section 82(2) CATCA 2003 relate to receipt of money by "*the spouse or child of the disponer or a person in relation to whom the disponer stands in loco parentis for support maintenance or education*". Accordingly, the Appellant does not satisfy the legislative requirements to be afforded an exemption to CAT under section 82(2) CATCA 2003.

Determination

42. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the tax is not payable.

43. The Commissioner appreciates that this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check that her legal rights were applied correctly.

44. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

Claire Millrine
Appeal Commissioner
10 June 2022