



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

217TACD2025

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) against a Notice of Amended Assessment to Capital Gains Tax issued by the Revenue Commissioners (“the Respondent”) on 16 May 2024 for the tax year 2023.
2. The appeal proceeded by way of a remote hearing on 8 May 2025. The Appellant appeared with his daughter and the Respondent was represented by two of its officials.

Background

3. Tax legislation allows for losses incurred on the disposal of an asset to be deducted from chargeable gains incurred on the disposal of an asset, in certain circumstances. In this case, the Appellant sought to offset a loss on the disposal by the Appellant of [REDACTED] (“the Property”) to [REDACTED] in 2022 against capital gains from the disposal by the Appellant of shares in a business to a third party in 2023.
4. On 20 March 2023, the Appellant filed a Capital Gains tax return for the tax year 2023, which showed the amount of chargeable gains as €59,167. On 16 May 2024, the Respondent issued a Notice of Amended Assessment to Capital Gains Tax for the tax year 2023, which showed the amount of chargeable gains as €95,437 and the amount of allowable losses as zero.
5. On 4 July 2024, the Appellant submitted a Notice of Appeal to the Commission and enclosed supporting documentation. On 28 August 2024, the Appellant submitted a Statement of Case and on 6 September 2024, the Respondent submitted a Statement of Case. On 8 November 2024, the Respondent provided pre-hearing documentation. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation

6. The legislation relevant to this appeal is as follows:
7. Section 10(3) of the Taxes Consolidation Act 1997 (“the TCA 1997”) provides:

“A person shall be connected with an individual if that person is the individual's husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual's husband, wife or civil partner.”
8. Section 549 of the TCA 1997 provides (among other things):

“(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset.

(2) Without prejudice to the generality of section 547, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length.

(3) Where on the disposal a loss accrues to the person making the disposal, the loss shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1), being a disposal made at a time when they are connected persons.”

Submissions

Appellant

9. In his Notice of Appeal and Statement of Case, the Appellant submitted the following (among other things):

“In my circumstances, the expression of doubt pertains to the utilisation of a loss arising on the disposal of a property [REDACTED] to [REDACTED] greater than the highest bid received and [REDACTED] greater than the stated guide price at the time. The property had gone sale agreed to another bidder at [REDACTED] less than I had paid for it in 2008.

The only way [REDACTED] having expressed an interest after the final offer, could purchase the house was by submitting to the auctioneer a further increased bid [REDACTED] in a fully transparent and at "arm's length" transaction thus finalising the sale.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In July of 2023 I disposed of shares [REDACTED] creating a Capital Gain Liability of €31.075.00 which has been paid in full to the Revenue. I am now appealing, on the basis of the above stated situation and a copy of a letter from [REDACTED] to have the loss generated by

the sale in 2022 set off against the gain of 2023 and tax refunded to me in the amount of €11550.00. I have already paid the full Capital Gain liability of €31075.00 in 2023

I fully understand the restrictions imposed by Tax Law S549 (3) TCA relating to sales to connected persons, however I feel that the circumstances of this transaction are far from black and white and the purchaser, [REDACTED] was in no way favoured to allow [REDACTED] advantage and the transaction was completed at a much greater distance than "arm's length" than might have been afforded to any other member of the public should they have wished to buy.

In my limited understanding of the Taxation system I am assured that in Irish and in EU Taxation the principle of fairness and consideration should always be applied. In an Overview of Economic Principles of a Tax System (18.06.21) section 3.4 refers to Effectiveness and Fairness and the Key points which I have listed in section 6 of this document with particular reference to market failure sets out this principle fairly clearly.

Last year 2023, I think you will agree if you look at my tax records, was a particularly bad year for me. I am asking you to take this and indeed my lifetime as a taxpayer into consideration in making your final decision."

10. At the hearing, the Appellant and the Appellant's daughter made the following submissions (in summary):

10.1. [REDACTED]
[REDACTED] When the Appellant found himself to have a tax liability in 2023, the Appellant felt that he might be able to write off a loss from the previous year. In 2022, the Appellant sold the Property at a loss from what he had purchased it for in 2008. The Appellant's [REDACTED] purchased the Property. That still left the Appellant with [REDACTED] a loss, and with the label of "connected person".

10.2. The Appellant asked the Commission to consider whether it was possible to look behind this label. The true nature of the transaction was that it could not have been any more at arm's length. The transaction was dealt with by the auctioneer, who determined that if another bid was to be made on the Property, it would have to beat the current offer. That bidder was given an opportunity to make a higher bid, which they declined to do. The winning offer was made by the Appellant's [REDACTED] but in no way was [REDACTED] in an advantageous position.

- 10.3. The legislation is not designed to be punitive. The point of the legislation is to avoid tax avoidance. There was no question of that in this instance. The transaction was dealt with at arm's length. The Appellant accepts that the legislation cannot be transcended and if it cannot be dealt with sympathetically, so be it.
- 10.4. In response to a question from the Commissioner, the Appellant stated that the disposal of the shares in 2023 was not made to the Appellant's [REDACTED] and was separate.

Respondent

11. In its Statement of Case, the Respondent submitted the following (among other things):

"The appellant filed their capital gains tax return via the Form 11 on 20th March 2023. They amended this but with the liability unchanged on 23rd March 2024. Revenue amended the return to disallow losses used to reduce the liability on the 17th May 2024, as the relevant transaction took place between connected parties. It is this decision that the appellant is appealing.

The appellant sold a property to [REDACTED] in 2022. In 2023 he had CGT gains from the disposal of shares, against which he wishes to offset the losses incurred in the sale of the above-mentioned property.

Section 549 (2) has the effect that transactions between connected parties are not to be considered 'Arm's length'. In this instance Revenue applies market value to the transaction. Section 549 (3) further restricts the use of these losses to transactions that take place between the same connected parties.

As the loss as described was incurred in a transaction with a connected party, this loss can only be used to offset gains from transactions taking place with the same connected party."

12. At the hearing, the Respondent made the following submissions (in summary). The Respondent could not ignore that this was essentially a sale to a connected person and not at arm's length. The loss in that case is only allowable in transactions with that same connected person in future. The Respondent understood the Appellant's circumstances but the Respondent was restricted by the legislation and there was no concession that the Respondent could make.

Material Facts

13. Having read the documentation submitted and having heard the oral submissions, the Commissioner notes that the following facts were uncontested, which the Commissioner has found to be material facts:
 - 13.1. In 2022, the Appellant sold the Property to his [REDACTED].
 - 13.2. In July 2023, the Appellant disposed of shares in a business to a third party and not to his [REDACTED].
 - 13.3. On 16 May 2024, the Respondent issued a Notice of Amended Assessment to Capital Gains Tax, which showed allowable losses in the amount of zero.

Analysis

14. This appeal relates to a Notice of Amended Assessment to Capital Gains Tax issued on 16 May 2024. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J stated at paragraph 22 that:

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

15. The Court of Appeal recently confirmed this position in *JSS, JSJ, TS, DS and PS v A Tax Appeal Commissioner* [2025] IECA 96, in which McDonald J stated at paragraph 34 that:

“the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”

16. It is also necessary to observe that in the Court of Appeal case of *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated (among other things) that:

“Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake...

In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;...Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner’s correct application of the law requires an objective

assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation”.

17. This appeal involves consideration of the applicability of section 549 of the TCA 1997 to the facts of the Appellant’s case. The Commissioner therefore considers it appropriate to set out well-settled principles of statutory interpretation.

18. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, in which Kennedy CJ stated:

“The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament...”

19. The Commissioner also adopts the summary of the relevant principles to be applied to statutory interpretation, as helpfully set out by McDonald J in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 at paragraph 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:*

(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”.

20. In this appeal, the Appellant sought to offset a loss on the disposal of the Property against capital gains from the disposal of shares in a business to a third party. In summary, the Appellant contended that while his [REDACTED] may have been a “connected person”, the reality of the transaction was that [REDACTED] had to outbid the highest bidder to purchase the Property. It was on this basis that the Appellant asked the Commissioner if it was possible to look behind the label of “connected person” and consider the circumstances of the appeal.
21. The Commissioner has listened to the parties and considered the documentation provided. Having done so, the Commissioner observes that the material facts in this appeal were undisputed. Accordingly, the question arising in this appeal relates to the application of section 549 of the TCA 1997 to the facts of this appeal.

Section 549 TCA 1997

22. Turning now to the legislation, section 549(1) of the TCA 1997 provides that section 549 of the TCA 1997 applies where a person acquires an asset and the person making the disposal of that asset is connected with the person acquiring the asset. In this case, the Appellant sold the Property to his [REDACTED]. The Appellant did not dispute that his [REDACTED] was a person “connected with” the Appellant and the Commissioner is satisfied that this was so by virtue of section 10(3) of the TCA 1997.
23. Section 549(2) of the TCA 1997 treats a transaction in which a person acquires an asset from a connected person as a transaction which is not at arm’s length and provides that this is without prejudice to section 547 of the TCA 1997, which deems transactions that are not at arm’s length to be made at market value. Section 549(3) of the TCA 1997 then provides that any loss incurred on a disposal to a connected person “*shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1), being a disposal made at a time when they are connected persons*” (emphasis added). It was undisputed that in 2022, the Appellant disposed of shares in a company to a third party and not to his [REDACTED], which the Commissioner has found to be a material fact.
24. The Commissioner acknowledges the Appellant’s submission that while the applicable legislation aims to deter tax avoidance, there was no such tax avoidance in this case and it was in effect an “arm’s length” transaction. In that regard, the Commissioner notes that the Appellant provided an auctioneer’s letter dated 27 September 2023, which stated that

in 2022, [REDACTED] bid [REDACTED] on the Property, after which the sale was concluded, and that the sale price of [REDACTED] was [REDACTED] above the guide price.

25. Notwithstanding the above, the Commissioner is satisfied that section 549(3) of the TCA 1997 restricts the deduction of a loss on the transaction at issue in this appeal. In forming this view, the Commissioner is mindful of the principles summarised by the High Court in *Perrigo*, as referenced above. The Commissioner finds the provisions of section 549(3) of the TCA 1997 to be clear and unambiguous. Section 549(3) mandates through the use of the words “shall not” that no deduction of a loss in a transaction between connected persons is allowed and makes one exception: against a chargeable gain on another disposal to the same connected person. As the Appellant disposed of shares in a business to a third party and not to the Appellant’s [REDACTED] the exception provided for in section 549(3) of the TCA 1997 does not apply to the facts of this appeal.
26. The Appellant asked if it was possible to “look behind” the label of “connected person” and consider the true nature of the transaction. However, the legislation confers no discretion on the Commissioner to disapply the provisions of section 549(3). The only exception which section 549(3) of the TCA 1997 makes is outlined above. Section 549(3) of the TCA 1997 does not exclude, for example, circumstances in which a taxpayer disposes of an asset to a connected person for a price which is, in fact, at market value or more than market value. For completeness, the Commissioner notes that section 549(4) of the TCA 1997 disapplies section 549(3) of the TCA 1997 in certain cases relating to gifts. However, that does not arise for consideration in this appeal.
27. Consequently, the Commissioner is satisfied that she has no statutory authority to disapply section 549(3) of the TCA 1997 to the circumstances of this appeal. The Commissioner considers that to do so would effectively require the insertion of statutory wording. For the avoidance of doubt, the Commissioner did not understand the Appellant to advocate any such statutory incursion, as he expressly stated that he accepted the legislation could not be transcended.
28. It follows from the above that the Commissioner is satisfied that section 549(3) of the TCA 1997 did not permit the deduction of a loss on the disposal by the Appellant of the Property to the Appellant’s [REDACTED] in 2022 against capital gains from the disposal by the Appellant of shares in a company to a third party in 2023.
29. The Commissioner appreciates that this decision will be disappointing for the Appellant and acknowledges the circumstances outlined on appeal. The Appellant was entitled to check whether his legal rights were correctly applied.

Determination

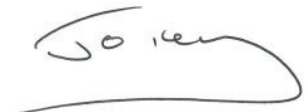
30. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Notice of Amended Assessment issued on 16 May 2024 was wrong, and the Assessment shall stand.
31. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

32. 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

33. 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.



Jo Kenny
Appeal Commissioner
31 July 2025