MKB CHARITY CPD EVENT – 19/12/2023

These presentations deal with current, topical and/or other sundry tax issues which might be of interest or relevance to practitioners and clients. As always, it is important to remember that the primary motive for mentioning any item is to prompt further examination - the format and nature of this presentation does not facilitate a proper exploration of the topics raised.

Tax law and practice is always evolving and these notes and slides are not intended to sufficiently cover all of the potentially relevant aspects of any issue and instead the slides, notes and the Speakers' comments attempt to crudely summarise issues on the basis that readers will revert to the legislation and explore matters further before taking any decisions and/or action.

The notes and comments reflect the Speakers' opinion and experience and the Speakers welcomes all thoughts, comments and contributions both during and after the presentation and contact details are included in the slides.

The notes are intended to compliment the slides and the Speakers' comments, and all three components should be regarded as a unified package designed to inform but also to entertain and provoke. There is an inherent risk in focusing on any one item outside of this context.

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FINANCE BILL (No.2) 2023

- **See Slides & Speakers Comment**
- **A copy of the legislation is available @ https://www.oireachtas.ie/en/bills/bill/2023/70/**

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TOPICAL TAX CASES – NOTES

December 2023

See above comments about context and caution. In addition these notes contain summarised and over-simplified versions of the cases referenced and the commentary may selectively focus on certain aspects and/or may be crude or simplistic for illustration purposes. The notes do not always try to reflect a detailed or balanced approach and can reflect a subjective narrative which can lead to errors, omissions and distortion of important details and even the decision. Readers should seek out further details of all cases referenced for a more complete and accurate account of the circumstances involved and the context of the arguments and ultimate decisions.

It is worth reiterating that all of the cases mentioned should be regarded as being for guidance purposes only and don't necessarily set binding precedents. TAC decisions are not automatically binding on future TAC cases. Some of the cases referenced may be from the UK and thus may have no impact on Irish interpretation. Any EU cases referenced tend to relate to VAT and again need to be caveated on the 'might not be binding' basis due to nuances within VAT rules in different countries.

01TACD2023 - VAT

- The Appellant 'A' was a marine fisherman. He registered for VAT in 2001.
- A owned a vessel and tonnage and used both in his trade.
- A also had a Bank of Ireland loan with his tonnage as security.
- A ceased to trade and de-registered for VAT in August 2012.
- The bank appointed a Receiver 'R' who sold the tonnage in 2017 for €871k.
- R did not account for VAT on the sale as he believed it was outside the scope of VAT.
- R did pay CGT and deducted this plus his and other costs from the sales proceeds and paid the net over to the bank.
- A re-registered for VAT and sought refunds for the VAT on the costs incurred by R on the sale of his tonnage.
- The Revenue refused the refund on the basis that the various invoices were issued to R and not to A.
- A argued that the invoices referenced both him and his boat as well as R.
- A argued that he remained the 'taxable person'. R incurred the costs on A's behalf.
- Revenue referenced an EU Regulation confirming that the sale of capacity rights was exempt from VAT but failed to produce this Regulation at the hearing!
- A was decidedly unhappy with the delays caused by Revenue and the TAC's granting of extensions etc.
- TAC noted the Revenue's changing arguments –
  - 1st VAT not refunded because invoices were not valid
  - 2nd VAT not allowed as sale was an exempt transaction
  - Finally, VAT was allowed but only to R.
- There were arguments about whether the sale was a 'transfer of business' etc.
- The Revenue also noted that A's refund claim was > 4 years etc.
- The Revenue noted also that A was not registered for VAT when the invoices issued.
- The Revenue noted that there was no VAT charged to counteract the input claim.
- The TAC explored a lot of these issues – the need for a sale, the ToB, etc
- The TAC noted the absence of any activity or VAT registration during the periods in which the invoices were issued.
- The TAC noted that A has provided no evidence of being involved in economic activity for the periods in question.
- The TAC noted that if the sale is taxable, A can't have a refund because the periods don't match. If the sale is not taxable, there can be no inputs anyway.
- The TAC noted that no VAT was applied to the sale rightly or wrongly.

⇨ Appeal denied – VAT cannot be reclaimed.

⇨ Case is being restated for the High Court.

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02TACD2023 – VAT (Kittle)

- Appellant A Ltd imported 32 cars from a UK Motor Dealer and treated same as margin-scheme vehicles.
- The UK Dealer treated the sales as intra-Community supplies. The Revenue contended that A Ltd knew or ought to have known this.
- A Ltd should have accounted for VAT on the full sales price.
- Assessments totalling circa €159k were raised for 2011-2013.
- The Director D gave evidence on behalf of the Appellant – D held 99% of A Ltd.
- D confirmed that they buy and sell second-hand cars and target margin-scheme vehicles only. This requirement is made known to all suppliers.
- D confirmed that some due diligence is done before meeting suppliers but ultimately relied upon the supplier to honour this.
- D accepted that some of the UK invoices has 0% VAT which would imply they were intra-Community supplies rather than margin scheme vehicles.
- D insisted that he was the go-between for A Ltd and the UK supplier but had no role in the administration or paperwork etc.
- D seemed to also work for the UK supplier.
- A Ltd insisted that they had treated the 32 cars as margin scheme cars in good faith.
- A Ltd confirmed that it had done sufficient due diligence as it had met with the UK dealer, obtained their VAT registration and had a trade reference.
- A Ltd had averaged a profit of €750 per car indicating that they believed them to be margin scheme cars.
- A Ltd insisted that it was an unwitting victim of VAT fraud and they were entitled to rely upon the UK dealer to do the right thing.
- The Revenue's witness explained how both the Irish and UK Revenue missed out on the VAT because both suppliers applied different treatments.
- The Revenue were not accusing A Ltd of 'retaining the forgone VAT', it may have been passed on to the consumer.
- The Revenue explained that, **had A Ltd wanted to ensure there was no risk, they could have treated the cars as Intra-Community and paid VAT on the full price**!
- The Revenue argued that A Ltd had provided no direct evidence of what it did to ensure that it was not involved in fraudulent transactions and invoked Menolly Homes.
- There appears to have been some messing with the invoices with ones held by A Ltd not agreeing with the ones on the UK dealer's files.
- The Revenue noted the various red flags that A Ltd should have explored – D's role with both sides, zero rate Vat on the invoices, A Ltd's VAT number was on the invoices etc.
- The TAC noted the red flags and the non-arms-length nature of the transactions.

- The TAC noted A Ltd's request for margin-scheme vehicles only, but A Ltd cannot ignore the format of the invoices which were intra-Community style.

⇨ Appeal Denied – Appellant should have known etc.

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03TACD2023 – CT (Inter-Group Loans)

- Complicated case involving $900m+ inter-group loans and treatment of "interest" paid on same by the Purchaser post sale.
- Big 4 Firm had agreed with Revenue interest was allowable for CT deduction purposes.
- Group then sold and Purchaser agreed to take over existing loan repayments as part of the sale agreement, and to then deal with same post sale.
- Big 4 Firm documents played an important part of the appeal
- Debate included traditional 'wholly and exclusive' for trade purposes argument.
- Debate included arguments about the nature of the payments – interest v refinancing costs v early repayment charge etc.
- Revenue argued the cost was (i) not wholly and exclusive etc and (ii) capital rather than Revenue, being linked to the sale of the company etc.
- Revenue used Appellant's documents to show that structure of the deal showed loans were repaid as part of same and not because of some decision by the Appellant etc.
- The TAC concluded that the original Revenue letter to E&Y was irrelevant as the circumstances that then existed had ceased.
- TAC was prepared to accept the payments were for Trade purposes, but not 'wholly and exclusively' so. It was also 'part and parcel' of the Sale agreement.
- The TAC also concluded that the payment was Capital rather than Revenue.
- TAC agreed with Revenue – not wholly & exclusively, not revenue but capital, so no CT deduction available.

⇨ Appeal denied – CT Deduction cannot be claimed.

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04TACD2023 – VAT (4 years)

- The Appellant (A) inherited a farm in the 1990s and farmed same for years.
- In the 2000's, he obtained planning permission to develop the land.
- A granted 3 licences to 2 different developers in 2006 allowing them to access his lands to carry out building works.
- The licences involved a cash payment initially, so A could pay the VAT, and the rest would be paid via the transfer to A of completed houses.
- A accounted for VAT on these licences in his November-December 2006 VAT 3.

- In 2016 the lands were sold to repay bank debts.
- In 2017 A issued 3 Credits Notes to the developers and reclaimed VAT of €342k approx.
- I assume the Credit Notes were for the unpaid element of the initial consideration, i.e. the amount that was to be paid via houses.
- The Revenue audited the VAT refund claim and in 2020 they disallowed the VAT claim on the basis of S.99(4) – the 4-year Rule.
- A argued that S.99(4) does not apply as S.59 applies S.99(1) and an obligation to file is not the same as making a claim.
- A also challenged the Revenue's view that the claim that the refund related to 2006, arguing it related to 2017 when the Credit Notes issued.
- The Revenue argued that the refunds stem from the 2006 transactions and thus that is the relevant period for the 4-year rule.
- As per Revenue "*the provisions relating to the issuing of credit notes do not provide that the net effect is the re-establishment of a taxable period*".
- A argued that S.59 states that the refund is automatically due and there is no need for a repayment claim, and thus S.99(4) cannot apply.
- The Revenue argued that S.99(4) applies to all refunds.
- The Revenue argued that S.99(4) – "A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates" – means 4 years from the period in which the VAT is paid, i.e. 2006.
- The Revenue noted that S.59 is subject to S.99 so there is no 'automatic' refund.
- Both the Revenue and the TAC referenced Menolly Homes.
- The TAC disagreed with the Appellant's argument about S.59 dis-applying S.99(4) and concluded that there is no difference between a filing and a claim.
- The TAC was unhappy with the Appellant referencing various EU cases at the Appeal but not listing same in the pre-Appeal submissions.
- The TAC did not accept that the issuance of Credit Notes created a new 'taxable period'.
- In short, the TAC agreed with the Revenue on both of the key matters.

⇨ Appeal denied – VAT cannot be reclaimed as > 4 years.

⇨ Case is being restated for the High Court.

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05TACD2023 – IT (4 years)

- The Appellant filed his 2016 Return in 2021 – the Revenue refused to issue the refund as > 4 years etc.
- Appellant explained he was working 7-days per week trying to save his business, he failed to do so and was lucky to find another job.
- He was so busy that his tax affairs suffered, also he was not aware of 4-year rule.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

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06TACD2023 – VAT (Gambling / Casino)

- The Appellant ran a 'gambling club' for its members wherein members could take part in blackjack, roulette, poker (cash games and tournaments) etc.
- There were numerous issues to be resolved, e.g. was gambling exempt? Was a service being provided? How do you calculate the VAT? Fiscal neutrality as bookies are exempt? Were proper books & records retained? etc etc.
- A argued that it did not receive any 'consideration' – the money it got from members were gambling winnings. If the member won, A paid them, if the member lost, the member paid A.
- A argued no service was provided by merely providing the facility to gamble, and even if there was a supply, no consideration was paid.
- A argued that the provision of playing chips was an administrative measure – no consideration passed and not charge was imposed, chips were used instead of cash for convenience etc.
- A noted that bookies only has to pay 2% Betting tax so Casinos cannot be asked to pay 23% VAT as they are 'direct competitors'.
- A argued that Ireland had to exempt betting via EU law, or at least enact clear legislation. It had done neither so gambling remains exempt.
- The Revenue noted that A is not a bookmaker.
- The Revenue referenced the difference between Gaming and Gambling.
- The Revenue insisted EU law allowed the Revenue to tax via allowing the Revenue to regulate exemptions.
- The TAC disagreed that Ireland had to exempt gambling and concluded that the State had the right to limit the exemption to certain activities only.
- The TAC did not agree with A's argument that Irish legislation was too vague and thus ineffective.
- The TAC concluded that A did provide a 'service' by providing the setting and the facility to place bets and play games etc.
- The TAC noted that the 'consideration' was the net winnings of A, i.e the gross takings less whatever winnings Members were entitled to.
- The TAC felt that the difference between a Casino and a bookie was sufficient so as to not fall foul of fiscal neutrality.

⇨ Appeal denied – VAT is payable.

⇨ Case is being restated for the High Court.

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07TACD2023 – VRT case

08TACD2023 – IT (4 years)

- The Appellant's spouse tried to file a 2017 medical expenses claim in 2021 but got an 'Error message'.
- They were told by Revenue to file a Form 11 as she was a chargeable person, but the Revenue never mentioned a deadline re. 4 years despite numerous contacts.
- When the 2017 Form 11 was filed in March 2022, the Revenue refused to issue the refund.
- The Appellant argued that the Revenue failed in its 'duty of care' by not informing them of the deadline.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

09TACD2023 – IT (4 years)

- The Appellant filed their 2015 Return in 2022. Revenue refused to issue refund as > 4 years etc.
- Appellant pointed out that they only became aware of their obligation in 2019. She was a front-line worker during Covid so didn't have time etc.
- She was also unable to get details from Revenue as their phone line was not functioning during Covid.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

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10TACD2023 - CRSS

- The Appellant (A) operated a shoe sales business which held an 'on-line filing exemption' as it had insufficient access to the internet.
- A applied for ROS registration as it was a perquisite for CRSS.
- A tried to claim for 20+ weeks that the store was closed. Revenue capped it at 8+ weeks as this was the length of the Covid restrictions that caused the closure.
- There was then an issue with later CRSS claims as they were not made on time – basically the 2021 periods
- The Appellants made complaints via the JIR about the Revenue's handling of their case.
- A noted that the lap-top with ROS was in the business premises and they could not access same due to travel restrictions.
- Revenue noted that the law set an 8-week claim period, A missed same so the Revenue had no choice but to deny the claim.
- Revenue noted that the Appellant could have obtained a new ROS cert, they could have asked their Accountant to make the claim, etc.
- Revenue noted that the Appellant was able to submit VAT Returns during this period – wondering aloud how this was achieved if no ROS access etc. The TAC referenced this in its decision as being critical?!
- The TAC agreed with Revenue.

⇨ Appeal denied – CRSS not available as claim made outside time limits.

⇨ Case is being restated for the High Court.

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11TACD2023 – Under-declared Sales VAT/IT/PREM

- The Appellant (A) was a sole-trade involved in steel fabrication and erection. He had his own workshop and also did a lot of 'site work'.
- The Revenue audited 2013 – 2015 and concluded that (i) proper books and records were not being kept and (ii) there was discrepancies which would imply sales were understated.
- After trying to get further details and documents, the Revenue raised additional assessments for income tax, PREM and VAT using estimates.
- A (via agent) argued that he had agricultural losses of €150k that the Revenue had ignored when raising the assessments. The loss was linked to the value of a mare when she died.
- A argued that the weather was a factor in his trade – can't work if too wet or windy – so he had to move fast on good days and this meant hiring casual labour to get things done.
- A noted that these workers would only 'accept cash payments' and Revenue refused to allow deductions unless there was bank transfers and receipts.
- A noted that documents had been stolen from his vehicle but could not provide a Garda Report or details of what was taken.
- Revenue noted that they were told the horse died in 2016 and the assessments related to 2013- 2015. Also they had no evidence that such a loss arose.
- Revenue noted that – in the absence of sufficient records – they had to estimate the sales and did so using bank records. However they had discounted same for loans from friends etc and reconciled their workings to RCT records.
- Revenue noted that A kept no records of wage payments and did not issue payslips.
- Revenue noted that they had given A ample chances to produce records etc etc
- The TAC agreed with Revenue as there was no evidence presented to say otherwise.

⇨ Appeal denied – €220k+ IT/VAT/PREM remains payable

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12TACD2023 – Artist's Exemption

- The Appellant (A) made tangible items – cushions, throws, toys, murals etc – from old clothes and other recycled materials.
- Items might involve old children's clothes or pet clothing or old jerseys or dead people's clothing etc. Everything was hand-made and could involve pictures embroidered onto the items, keepsakes been sewn on, etc.

- She claimed the Artist Exemption as 'original, creative' etc etc. Revenue did not challenge this aspect that the work had cultural or artistic merit etc.
- Revenue argued that her work could not qualify as it was not a book, a play, music, a painting or a sculpture etc.
- She argued that her work was in the category of "*a painting or other like picture*" or some – like stuffed toys – were 'sculptures'.
- Revenue argued that – in any event – she was excluded via para 8 exclusions – being "primarily for ….decorative …. purposes" .
- A explained that a lot of her work involved using old pictures to create embroiled images etc. Even toys etc that had no picture were 'displayed on shelves' similar to paintings being displayed on walls etc.
- The TAC noted that the stuffed toys could be regarded as 'sculptures' and this does not just apply to items made from wood or metal etc.
- The TAC noted that the quilts, cushions and throws could be regarded as '*a painting or other like picture*'.
- The TAC noted that the extremely personalised nature of the work meant that it could not be regarded as '*primarily for decorative or other similar purposes'*.

⇨ Appeal Upheld – Artists Exemption did apply.

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13TACD2023 - CRSS

- The Appellant ran a 'private members club' and claimed CRSS – appears to be a gaming arcade and casino or similar business.
- Case involved a dispute about when Covid Restrictions were lifted.
- Revenue denied CRSS from 6th September 2021, Appellant argued that they could not reopen until 22 October.
- Not really a tax issue – conflict and confusion about published guidelines. Bottom line was Appellant was working off government website, press releases, Dail exchanges etc and Revenue used actual Statutory Instrument.
- Worth noting that the Statutory Instrument only became Public on 7th September!
- Sector could have reopened on 6/9 but they didn't know as press release etc implied they had to wait until 22/10.
- The TAC noted its limitations via Lee v Revenue.
- In short, CRSS only applied if legally restricted, they were not legally restricted, the fact that no one told them this and implied differently is not a TAC issue!

⇨ Appeal denied – CRSS did not apply

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14TACD2023 – Domicile Levy

- Tax involved 2010 – 2016 and amounted to €719k.
- Appellant was Irish resident and Domiciled and have substantial rental investments.
- Gross rents €2m - €3m but interest etc meant taxable rents < €100k.
- Appellant's arguments revolved around meaning of 'income' in S.531AA.
- Appellant believe his Case V income was < €1m because you deduct certain items, Revenue insist it is gross income etc.
- The Corcoran case featured heavily – that case involved an argument about deducting Hotel Capital Allowances for the Domicile Levy.
- The TAC noted that, in the Corcoran case, the Revenue had accepted that Gross Income was NOT Total income.
- The TAC noted the Revenue's argument in this case differed to their position in the Corcoran case. Revenue noted that this case involved S.97 whereas the Corcoran case involved S.82 (this is Case V, that was Case I).
- The TAC noted that the Corcoran case is under appeal to the Court of Appeal, but as of now the High Court decision stands.
- The TAC did not agree with Revenue that the Corcoran case did not apply here.
- The TAC agreed with the Appellant on the basis that Corcoran supported this approach.
- 'Income' was after repairs and interest etc and this < €1m.

⇨ Appeal Upheld – Domicile Levy not applicable.

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15TACD2023 – VRT case

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16TACD2023 – Under-declared Sales

- The Appellant had a small business selling coal, feed, fertilizer, gravel etc, and engaged in the haulage of animals.
- Revenue reviewed his 2012 – 2015 affairs but struggled to get proper records
- The Appellant engaged a new Agent who liaised with Revenue but the agent also struggled to get proper records etc.
- After numerous meetings and letters etc, the Revenue raised amended VAT and income tax assessments based on the records that did exist.
- Appellant's agent noted it was a small business selling to local farmers etc.
- He noted the Appellant was disorganised but always tried to be compliant.
- He argued that the Revenue's estimates were unrealistic given the nature of the business.
- Revenue noted that they had engaged fully with the Appellant and ultimately their figures were based on his records.

- The TAC noted the Appellant's obligations to keep proper books etc.

⇨ Appeal denied – VAT and Income Tax must be paid

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17TACD2023 - CRSS

- The Appellant (A) ran a Pub and claimed CRSS from October 2020 to January 2022.
- A tried to claim for June 2021 in October but was denied as his claim as > 8 weeks late.
- A's agents noted that Revenue's guidance was 'voluminous' and was constantly been updated and this 8-week deadline was not adequately highlighted.
- The appeal was about the Revenue's refusal to process the claim after 8 weeks.
- A noted that the guidance for Restart claims didn't link same to 8-week deadline.
- There were a lot of arguments but ultimately A's case was that this restriction was not explained well enough and the whole thing was unfair.
- Revenue noted legislation and guidance both covered same so ces la vie.
- The TAC noted its scope is limited – Lee v Revenue – etc
- TAC noted claim was late so legislation prevents Revenue from processing same.

⇨ Appeal denied – CRSS denied as claim was outside permitted claim period

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18TACD2023 - CAT

- In 2011 the land registry and stamp duty documents indicate that the Appellant's mother transferred a house to him for €0 consideration.
- Around the same time, his mother gifted a similar property to the Appellant (A) and his sister as joint owners.
- The SD submissions confirmed both properties were worth €165k and the actual consideration passing was €0.
- A argued that he had actually paid €165k for his house in 2008. He claimed that the 2011 transfers related to taking possession of the 'common areas'.
- A did not produce documents supporting his claim to have paid for the house in 2008 or that the 2011 transfers related to the common areas only.
- A was very unhappy with the Revenue's conduct of his review and about the lack of information provided to him after an FOI request.
- The Revenue's initial assessment was for > €150k as it included sanctions but did not include any Exemption Threshold.
- The Revenue later issued a revised assessment for circa €100k, this time applying the Class C threshold.

- At the beginning of the hearing, the Revenue conceded that the assessment is wrong as Class A should apply.
- The TAC was disappointed that the Revenue did not resolve this Class A issue previously given they had sufficient details to do so etc.
- Note that the Revenue raised the assessment using the wrong threshold and only admitted that Class A applied at the hearing itself.
- A's argument was that no gifts arose in 2011 as he got common areas and these were a burden rather than a benefit etc.
- Revenue noted that the SD and other documents said differently.
- Revenue noted that A had provided no documents to support his claims.
- The TAC noted Menolly Homes etc

⇨ Appeal denied – CAT and Surcharge payable.

⇨ Case is being restated for the High Court.

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19TACD2023 – Customs & Excise case

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20TACD2023 – Stamp Duty 4-year Rule

- The Appellant (A) held 100% of X Ltd which was placed into voluntary liquidation in 2015 and a liquidator appointed.
- The liquidator paid all debts etc and in 2017 distributed in specie the property previously held by X Ltd.
- A's solicitors paid stamp duty of €8k on the transfer of the property in October 2017.
- In 2022 the solicitors sought a refund of the stamp duty as they realised distributions in specie were exempt.
- Revenue refused to issue the refund as > 4 years etc.
- Appellant argued that S.159A's time limit should not apply
- Revenue argued that they have no choice….'shall'…etc
- The TAC agreed with Revenue.

⇨ Appeal denied – SD can't be repaid as > 4 years.

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21TACD2023 – CAT Dwelling House

- The Appellant (A) separated from her husband in 2000 and moved in with her mother.

- A's mother died in 2015 and bequeathed the house to A.
- A sold the house for €1.11m and purchased a replacement house for €575k.
- She claimed S.86 in her CAT Return on the basis of the €672,500 reinvested – cost plus enhancement etc.
- The 'sales proceeds' were circa €876k rather than €1.1m as she claimed that she had spent €224k renovating her mother's house and thus had an 'equitable interest' in same.
- The Revenue accepted the S.86 claim but the claim should be based on €1.1m and €575k – i.e. they ignored the €224k spent on her mother's house and the €97,500 'enhancement' claimed as a cost for the new house.
- A had 6 witnesses at the hearing – herself and 5 others - dealing with the works done and why on both properties etc.
- The Revenue noted that A had failed to prove that she spent €224k on her mother's house and this alone was sufficient to deny the 'equitable interest' argument.
- The Revenue noted that there was no document to support her entitlement to an equitable interest in the mother's house.
- The Revenue argued that the TAC has neither the capacity nor jurisdiction on this issue.
- The Revenue noted that the wording of the legislation meant that only the purchase price of the new house was regarded as 'replacement'.
- The TAC noted the numerous witnesses and evidence of the works done to her mother's house, but not about the funding of same.
- The TAC noted the absence of documents and the absence of attempts to source documents by the Appellant to deal with the €224k.
- The TAC noted that the enhancement works for the new house were improvement works. There was no proof that these were necessary to make the house 'habitable'.
- The TAC noted the absence of proof to support the claims that these works were necessary for her family to move in – or even that they were done before they moved in.
- The TAC noted that the evidence indicated the works were discretionary.
- The TAC concluded that the relief should be calculated on the full €1.11m sales proceeds.
- The TAC noted the Revenue's comments about jurisdiction but didn't comment on same.
- The TAC agreed with Revenue's view that the legislation for the replacement property did not accommodate post-purchase expenditure. (Note the TAC did not accept A's claim that the enhancement was part of the cost as it was necessary to make the house habitable. However even if this were the case, the intimidation was that it would not change the decision).

⇨ Appeal denied – Dwelling House relief recalculated.

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22TACD2023 – CGT timing

- The Appellant (A) sold shares in 2015 that generated a gain of circa €248k
- A sold a property in 2015 that generated a loss of circa €375k.
- Both sides agreed on the actual calculations of the gain and loss.

- The Revenue believed that the sale of the property was via a ‘conditional contract’ so the sale actually took place in 2016, when the condition was satisfied.
- A had claimed the loss against the gain in 2015 and paid no CGT.
- Revenue believe that the loss was in 2016 and can only be C/F so A owed CGT for 2015.
- The Sales Contract for the property was dated 22nd December 2015.
- It contained a clause which
  (i) noted that there was insufficient information to allow the Purchaser be satisfied about title/planning etc
  (ii) allowed the Purchaser to pull out if the vendor did not satisfy the Purchaser
- A argued that (i) only the Purchaser had the right to withdraw, and (ii) these were conditions subsequent as they ‘were not beyond the Vendor’s powers to do’.
- The Revenue argued that these ‘unusual’ conditions “*vested an absolute, unfettered discretion to the purchaser*” who could opt out with no consequences and therefore this was basically an option rather than a contract.
- The Revenue noted that the closing date on the contract was 30th June 2016 but it didn’t close until April 2017 and thus further proved it was a ‘conditional contract’.
- The TAC noted that planning compliance was not completed until March 2017.
- The TAC did not agree with A’s claim that one party being bound by a contract means it is an unconditional contract.
- The TAC noted that when a sale is conditional on the exercise of an option, it is the date of exercise that is the date of disposal.
- The TAC noted that there was ‘considerable’ time and money spent by the Appellant to get the planning retention needed to complete the sale.
- The TAC noted that the Appellant received less proceeds than the contracted amount and had to pay some of the Purchaser’s fees.
- The TAC agreed with Revenue’s argument that the Contract was basically an option for the Purchaser and not a contract per se.
- A had asked the TAC to set aside the penalty imposed by the Revenue as this was clearly a ‘technical adjustment’ scenario but the TAC noted Kenny Lee decision re. its scope etc.

⇨ Appeal denied – CGT Loss not available as fell in later year.

⇨ Case is being restated for the High Court.

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23TACD2023 - CGT

- The Appellant (A) and his wife jointly purchased property in 1991 including a house and 20 acres.
- They sold the 16.5 acres in 2005 for a large gain but no CGT Return was filed.
- In 2015 A made an unprompted disclosure re. income tax for 2006 – 2014.

- The Revenue commenced an Audit in 2015 which prompted A to submit a 2005 CGT Return claiming S.598 RR on the sale of the 16.5 acres.
- A claimed that they owned and farmed the land for 10 years prior to its sale. The Revenue noted that they had de-registered for income tax in 1998.
- A explained that they had been deer-farming until 2002 and sold off hay from 2002 to 2005. They did not disclose anything because they suffered losses and made no money.
- The Revenue wanted proof of the activities and proof that a 'commercial partnership' formally existed between the couple.
- A explained that they jointly held the land and had a joint bank account but Revenue argued this was not sufficient to show they were both involved in the activities.
- The Revenue informed the Appellant that they were raising an assessment as they had no proof of a partnership. A appealed on receipt of this letter.
- Note a curious aspect of the case was the actual CGT assessment was missing. Revenue relied upon screenshots etc to show it issued via post only, A denied ever actually receiving it and noting that it was unusual that it was not also issued electronically.
- The TAC concluded that the assessment probably did issue by post.
- The TAC concluded that, as A appealed the Revenue's letter rather than a physical assessment, the appeal was against the Revenue's determination that RR did not apply.
- Both A and his wife gave evidence as to their activities on the farm and explained that they de-registered as they were loss-making but they did not stop etc.
- A also explained that no CGT Return was submitted because their agent told them the sale was exempt from tax.
- The Revenue noted the deregistration, the absence of Farm Accounts, no CGT Return, there was no evidence that the deer sold in 2001 were using that land, etc etc.
- The Revenue noted that there was no evidence of a partnership in existence.
- The TAC noted that there were two arguments – (i) the land was not used for farming purposes to its sale in 2005 and (ii) that both spouses farmed the land.
- The TAC noted the deer farming until 2001 and accepted that hay and silage was sold to neighbouring farmers from 2002 to 2005.
- The TAC had to consider if the growing of grass can be considered 'husbandry' and thus 'farming'. **It was!**

  "*As a result of the above the Commissioner is satisfied that the use of land for the production of grass for the purposes of silage and hay is one of the key activities which farmers undertake. Therefore, the Commissioner finds that the production of grass for the purposes of silage and hay is husbandry for the purposes of the definition of farming pursuant to section 654 of the TCA1997*"

- The TAC noted the Revenue's arguments that there was no evidence of joint activity other than the joint bank account, e.g. invoices from suppliers, grant applications etc.
- The TAC accepted the wife's evidence and noted that it was not unusual for such documents to be in one name only.

- The TAC noted the level of income for these period when compared to the pre-1998 submissions and concluded that these indicated a continuation of farming activities.

⇨ Appeal Upheld – RR was due and for both spouses.

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24TACD2023 – Excessive Remuneration

- The Appellant (A Ltd) was involved in providing staff to the HSE.
- A Ltd was owned by H and his spouse W was also a director. A Ltd sourced locum doctors for the HSE. W was also an EMR (Emergency Medicine Registrar).
- The Revenue noted that the salaries paid to H were excessive and they were limiting same to circa €3,198, being the average wages a secretary would get for 5 hour weeks.
- The excess paid to H was being disallowed as not being commensurate with his expected duties, and will be treated as additional income for W.
- After exchanges, the Revenue agreed to allow an additional €2,000 to cover H's duties as a Director in A Ltd.
- H argued that using a secretarial rate was not a fair comparison and that his wages were reflective of the diversity of roles undertaken and his duties and responsibilities.
- H gave evidence explaining how he'd formed the company and worked as finance director etc. He explained that W dealt with the medical side and he did everything else.
- H accepted that he was not ACCA qualified but argued he did prepare the documents for the Accountant they engaged.
- W gave evidence confirming she played no role in the administrative side.
- Revenue noted that not all sums paid to Directors are " *necessarily wholly and exclusively laid out for the purposes of the trade*".
- Revenue noted that H provided no timesheets or other evidence of the hours he worked.
- Revenue noted that H provided no support for what his hourly rate should be.
- Revenue argued that A Ltd must be able to justify its claim and can't rely on an estimate of hours and an estimate of the value attributable to same.
- The TAC noted H's evidence but also noted the size of A Ltd, the number of employees and the assistance provided by an Accountant.
- The TAC noted the absence of evidence of H's working hours.
- The TAC did not find it credible that H had to be 'on duty' while W was working 'in case of a health and safety issue' occurring.
- The TAC noted the absence of any supporting documentation for H's working hours or the hourly rate he received.

⇨ Appeal denied – Excessive Remuneration was disallowed - PREM assessments stood

⇨ Not clear how S.81 - which would support CT assessments - can justify assessing one person on the wages of another (note she was not the shareholder so even 'dividend argument' hard to reconcile with this outcome).

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25TACD2023 – IT (4 years)

- The Appellant filed his 2016 & 2017 Returns in 2022 – the Revenue refused to issue the refund as > 4 years etc.
- Appellant explained that the reason for the refunds was the Dept. of Education applied the wrong tax – there was no error on his side so denying him the refund was unfair.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

26TACD2023 – VRT case

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27TACD2023 - CAT

- The Appellant's (A) parents held a Life Insurance / Investment Policy.
- In 2015 her parents sold the policy to A and her siblings for €3.4m plus 'natural love and affection' etc. The Policy was valued at > €5m.
- Parents remained legal owners but children became beneficial owners.
- The Parents were to surrender and encash the policy within 2 months at which point the sale of the Policy would close.
- On encashment, exit tax @ 41% applied via S.730K – the Parent's declared same in their Form 11 for 2015.
- The Parents transferred the cash to their children in May 2015.
- A filed her CAT Return claiming relief against her CAT for the CGT paid by the parents via the 41% exit tax.
- Note S.730K(5) treats the 41% income tax as CGT.
- Revenue audited the case and sent it off to RTS for an opinion. Revenue then confirmed that they did not believe that the S.104 CGT/CAT offset did not apply.
- Revenue raised a CAT assessment and A appealed same.
- Revenue's view was that the agreement only created an interest in expectancy, and that CAT only arose on the benefit falling into possession – May 2015.
- Revenue believed that the CAT and CGT arose on different events and thus no S.104.
- At the hearing, A's Senior Council indicated that the arguments to be made were different to those included in the Outline of Arguments. TAC noted Lee / Stanley/ Smidic etc.
- A explained that the cause of their change was seeing the Revenue's Outline of Arguments which itself changed the basis of the Revenue's position.

- A argued that the timing of the assessment v the RTS response to their Revenue colleagues and argued that, at the time of raising the assessment, the Revenue did not know the basis for so doing!
- A argued that the beneficial interest in the policy passed on the signing of the Agreement and this the gift is deemed to be taken on this date. The Parents were acting as nominees/bare trustees for the Appellant when they encashed the policy.
- A argued that May could not be the correct date as the policy did not exist on that date.
- A argued that the Revenue cannot now rely upon the 2-year rule in S.104 as it was not part of the assessment. A noted Stanley v Revenue and that the TAC must focus on the actual assessment raised, which is wrong and should be voided.
- A also noted that S.105 does not define 'disposal' and that the encashment of the policy was not a disposal so no 2-year rule issue arose anyway.
- There seems to have been an argument that the encashment took place sooner as the instruction was sooner and thus before the gift etc. just assuming this based on TAC ignoring same due to lack of evidence in her analysis.
- A noted that the S.535 deeming provision for CGT does not apply to CAT – therefore there is no 'disposal' for CAT purposes and thus no disposal for S.105.
- Revenue argued that the agreement made it clear that the children had no control over the surrender of the policy and this the agreement did not result in a 'present right' to the enjoyment of the policy, merely a future right.
- The Revenue noted for example that, had she wanted them to, A could not ensure that her parents retain the policy for longer before encashing same.
- On this basis, A argued that the 'present right' to enjoy the policy only arose for A in May 2015, and this was the crucial date for CAT purposes.
- The Revenue argued that the Parents' CGT exposure arose on the date of the agreement as this is when they sold their rights under the policy.
- Therefore the Revenue argued that the CAT and CGT were linked to different dates and different events.
- The Revenue noted that the consideration paid by the children was not physically paid but instead retained by the Parents from the policy's funds.
- The Revenue felt that this supported their argument that the event that triggered the acquisition of the interest was in May 2015 when the actual consideration was paid.
- In any event, the Revenue argued that S.104 cannot apply as the policy was disposed on within 2 years on foot of being encashed.
- Revenue did not agree with the argument that the encashment was not a disposal, and noted the definition of disposition in S.2 CATCAs was sufficiently wide etc.
- A argued that the Revenue cannot seek to rely upon a different gift other than the one covered by the assessment issued.
- The TAC noted the nature of the agreement and concluded that Part 1 deal with the sale and Part 2 dealt with the completion of the transaction.
- The TAC noted the evidence given by A at the hearing (which was basically that her understanding was that she acquired the policy but it was easier for administrative purposes that her parents retain a role as legal owners).

- The TAC noted that her evidence that her Parents were merely nominees was not contested by the Revenue.
- The TAC did not agree that the Parent's ability to encash the policy amounted to a restriction on A's interest in the policy.
- The TAC concluded that A acquired her gift in April and she was 'entitled in possession' to the gift on signing the agreement.
- The TAC noted the dictionary definitions of a disposal as including the action of getting rid of something etc.
- The TAC concluded that the encashment was a disposal for the purposes of S.103.
- The TAC concluded that the taxes arose on the same event but S.103 was not available as the asset was sold within 2 years etc.

⇨ Appeal denied – no CGT/CAT offset so Gift Tax payable.

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28TACD2023 – ARF / PAYE Refund

- The Appellant (A) was resident in Portugal from 2009 to 2017.
- Previously he had been self-employed in Ireland and funded his pension via RACs.
- On retirement, he transferred his pension into an ARF.
- On 15 December 2017 he received a distribution of €527k from his ARF and suffered €240k in PAYE and PRSI.
- On 22 December 2017 the Revenue revised their Pension manual for non-residents with Irish ARFs.
- A claimed a refund of the tax as he was not Irish resident etc.
- Revenue issued a P21 seeking a further €11k.
- A argued that Article 22 of the DTT ensured Ireland could not tax his pension and thus all of the PAYE/PRSI should be refunded.
- Revenue's new approach was that ARFs were not 'Pensions' for the DTT.
- Revenue noted that the distribution was 'capital in nature' and the DTT did not apply.
- A's witness was a Portuguese Tax expert and he argued that the income was income in Portugal and was covered by Article 11 of the DTT.
- The Revenue's witness was also an expert and he argued that the Portuguese law ensured that the income was taxed as it arose in the ARF and not at the point of distribution.
- The TAC noted
- *"There is no specific article within the DTA governing taxing rights in relation to ARF distributions under the articles of the applicable DTA. As the Appellant is the beneficial owner of the underlying assets within the ARF, the distribution must be divided into its constituent parts for the purposes of determining the taxing rights under the articles of the applicable DTA."*
- A argued that the ARF fund was income because it comprised of pre-tax income by way of pension contributions.

- Revenue argued that the distribution was capital in nature and character and deemed to be an emolument for Sch. E purposes via S.784A.
- The TAC noted that individuals and employers cannot make contributions into an ARF, the ARF can only arise post maturation of the retirement benefits.
- In short, the TAC noted that the origins of an ARF is already a ‘fund’. That ‘fund’ may have had as its source income being contributed in, but when transferred to the ARF it is an accumulated lump sum.
- The TAC concluded that the ARF is a capital fund and thus distributions from same are capital in nature.
- The TAC concluded that treating an ARF distribution as an emolument for PAYE does not equate to deeming the payment to being ‘income’. It can remain capital in nature.
- Therefore the distribution cannot be ‘earned income’, and thus the TAC concluded that it was not covered by the DTT.
- The TAC also noted that there was no ‘double tax’ because the distribution was tax exempt in Portugal.
- The Appellant argued that it was unfair to withdraw the concessionary treatment previous available especially given he drew down the funds before the Revenue changed their policy etc. The TAC noted it has no jurisdiction on ‘fair’ and ‘concessions’ etc.

⇨ Appeal denied – No refund Due.

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29TACD2023 - HIER

- The Appellant (A) filed her 2014 Income Tax Return on time, then filed a revised one to correct errors on her Case V income.
- In both cases her agent had issued with the HIER as the box was ticked and the section filled out but both times ROS had indicated this was an error as “You have indicated that you are a High Earner but have not reached the requirements needed as per the legislation”
- The agent deleted the HIER entries, filed the Returns and paid the tax due as per ROS.
- When Revenue asked about HIER, A explained that ROS told them that it was not relevant. This lead to the revised assessment with HIER applied and the appeal.
- A’s argument was that they did as ROS asked so it was unfair to ask her to pay more now.
- Revenue explained that her Rental Capital Allowances should have been restricted due to HIER – the ROS issue did not change this.
- Revenue explained that they can’t explain the ROS message because the agent used ROS offline. Therefore their IT systems don’t ‘have sight’ of the error message etc.
- In any event, the Revenue noted that the ROS message was irrelevant as it did not remove A’s obligations to apply HIER etc.
- Revenue noted that A could have used the Expression of Doubt facility but did not.

- Revenue also noted that A was not challenging that HIER applier or the Revenue's maths etc and this the assessment should stand.
- TAC agreed with Revenue.

⇨ Appeal denied – HIER did apply.

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30TACD2023 – VAT ICAs

- The Appellant (A) is a NI company registered for UK VAT.
- They were prevented from claiming back VAT via the EVR as – post Brexit – the HMRC portal was down.
- A contacted the Irish Revenue for guidance re. reclaiming EU VAT and explained their situation – tried to reclaim 2020 but couldn't etc.
- The Revenue reverted saying that no refund could be claimed as deadline had been missed.
- See case for details – VAT related to diesel bought here, Revenue explained EVR process and post-Brexit regime, the Withdrawal Agreement, NI Protocol etc etc etc
- Bottom line is A missed their window so nothing Revenue could do.
- A appealed the Revenue's decision to deny the claim.
- A's arguments included their long compliance history, their attempts to submit the claims on time, the confusion post Brexit, the HMRC's system issues, etc.
- The TAC agreed with Revenue regarding the deadline.
- The TAC did not find it creditable that A was unable to prove their attempts to make the claim on time but being foiled by the HMRC's system issues etc. The TAC noted that A should have retained documents etc proving this.

⇨ Appeal denied – VAT cannot be reclaimed.

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31TACD2023 – VAT - Kittle

- The cases involved VAT of > €6.5m for 2013 – 2018 which arose because the Revenue believed that the Appellant (A) 'knew or should have known' that fraud was involved.
- There was an interesting debate about the jurisdiction of the TAC and the difference, in this context, between Irish and EU law.
- A argued that its right to a defence under EU law was breached by the Revenue.
- The Revenue questioned if the TAC had jurisdiction to consider this – the TAC decided that it did – abuse of EU law not being excluded as per Kenny Lee case.

- A's argument was that the Revenue raised assessments before giving them a right to reply to the Revenue's allegations etc.
- A argued that the Revenue raised the assessments before giving A access to the materials and documents upon which the Revenue's 'conclusions' were based.
- A believed that this was deliberate by the Revenue to prevent A from addressing the issues before the assessments were raised.
- A argued this breached their right under EU law to a defence.
- The Revenue argued that most of the documents relevant to the case were A's own books
- The Revenue also argued that the assessments were not a 'final decision' but rather part of a process that the Appellant can engage in.
- The TAC noted the Revenue (i) informed A that the assessments would be made and promised to send a letter explaining why later and (ii) informed A that it was a matter for the TAC to decide if the Revenue's conclusions were wrong.
- **The TAC concluded that the Revenue had in fact breached the Appellant's rights to defence**.
- The TAC noted its surprise at the Revenue's description of assessments not being a final decision and not affecting the rights of the Appellant etc.
- The TAC dismissed the Revenue's argument that they were mainly relying upon the Appellant's own records somehow relieved the Revenue of the obligation to explain their conclusions – A would have to guess what items the Revenue were relying upon.
- The TAC noted that the Revenue "*bears the burden of proving that the Appellant knew or should have known that the transactions with the missing traders and the EU customers were connected with VAT fraud*".
- The TAC noted that it was obliged to ignore the evidence proffered by the Revenue.
- If the Revenue have the burden of proof but no evidence then……
- The TAC dismissed the assessments and reduced the VAT to €NIL.
- Notwithstanding the above, because the evidence had been given and because the finding re. EU breach might be over-turned, the TAC also considered the 'knew or should have known' issue.
- A purchased from 12 'missing traders' and some of the VAT related to the inputs on these invoices.
- A sold to 4 EU customers on a 0% basis and Revenue also raised VAT on these invoices.
- For the suppliers and customers, the Revenue argued that A should have known that they were engaged in fraud.
- The Revenue's witness talked about the absence of due diligence and various 'red flags' including payments in advance of invoices, the same contact person for different entities, unusual credit terms etc.
- Worth reading for how the Revenue construct such a case and how businesses can take steps to protect themselves etc.
- The TAC had issues with the Appellant's due diligence and with the witness evidence.
- The TAC did not believe that A was concerned enough about ensuring the business did not get dragged into VAT fraud.

- However the TAC found that there was no evidence that A was paying below market prices, and that this was ‘crucial’.
- Ultimately, the TAC focused not just on Kittle but also Moblix – fraud was the only reasonable explanation.
- The TAC concluded that A’s actions increased the risk of getting dragged into fraudulent transactions, but this is not the same as ‘should have known’.
- VAT still €0 as TAC concluded Kittle did not apply to the Appellant.

⇨ Appeal Upheld – VAT reduced to Zero because the Revenue denied their EU right to a defence.

⇨ Case is being restated for the High Court.

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32TACD2023 / 33TACD2023 / 34TACD2023

32TACD2023 - PSWT

- The Appellant (A) was a member of a Partnership.
- Initially all of the partners shared the work load and the profits equally.
- Later one of them - the 2nd Partner or 2P – reduced his hours and made arrangements to fill the gap. This was accepted initially but caused problems over time.
- The Partners changed their agreement so that (i) each partner was paid a salary for their hours worked and then (ii) the profits were shared but all partners other than 2P.
- Circa 2013 it was agreed that A would be allocated €20k of the PSWT as part of the overall profit share for 2012 – this appears to have been once off.
- It is a difficult case to follow as it is heavily redacted but the core issue appears to be that the PSWT allocation was not in sync with the profit allocation and it led to the cumulative PSWT being claimed by the Partners being higher than the PSWT available to them.
- In the end it seems that the Revenue reduced A’s claim – along with the other partners – but left some PSWT with 2P.
- A’s argument appeared to be that 2P had no such entitlement so A’s PSWT should not be reduced.
- The Revenue’s argument was basically they tried their best to get the Partners to agree an allocation and when they wouldn’t then the Revenue did the best they could.
- A’s case revolved around the legislation and that there were really only 4 partners getting a share of profit as 2P was really only getting a salary.
- The Revenue’s case was that the dispute made it difficult to conclude what the share of profits were, so they made ‘the necessary apportionment’ to resolve matters.
- The TAC agreed with Revenue for some of the periods, but agreed with the Appellant for others – the difference being the changing terms of the partnership etc.

⇨ Appeal partially Upheld – 2010 and 2011 stand but 2013 and 2014 reduced to €0.

33TACD2023 - PSWT

- Case Identical to the above – just related to a different Partner but not '2P' as above.
- Same case – different partner – same decision

⇨ Appeal partially Upheld – 2010 and 2011 stand but 2013 and 2014 reduced to €0.

34TACD2023 - PSWT

- Case Identical to the above – just related to a different Partner but not '2P' as above.
- Same case – different partner – same decision

⇨ Appeal partially Upheld – 2010 and 2011 stand but 2013 and 2014 reduced to €0.

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35TACD2023 – CT Expression of Doubt

- Case involved a debate about whether or not an Expression of Doubt was 'genuine'.
- The Appellant's (A) agent submitted an EoD to LCD re. its 2014 CT1.
- A had included an adjustment re. Depreciation in 2014 which included an adjustment for errors from 2007 onwards.
- Revenue rejected the EoD on the basis that there is no 'doubt' about the treatment of Depreciation for CT purposes – it is always an add-back.
- A argued that their treatment was 'unusual' - an element of property, plant and equipment depreciation is added to trading stock each year, and later released back to the P & L when the stocks are brought into use.
- A referenced UK Case Law to support their treatment. A argued that the matter was sufficiently complex so as to merit UK litigation all the way to the House of Lords.
- A noted that the HMRC had to issue guidance on the matter but the Irish Revenue has no public guidance on same.
- A noted that there were two areas of doubt – (i) the treatment itself and (ii) the accumulated adjustment – but they amounted to a single issue – the addback in 2014.
- A noted that the tax impact of the adjustment was relatively immaterial - €1.5m in CT but their annual profits were in the €100ms.

- A explained that there were excel-based errors in their calculations and the discovery of the errors prompted the discussions about the treatment and the EoD.
- Witnesses include A's internal Finance person and their external tax expert.
- The tax expert explained the decision to include the accumulated adjustment on the basis that there is no need to adjust prior years "*to correct immaterial inadvertent errors*".
- The Revenue noted that A had used the same treatment for 20+ years and never felt the need to express doubt.
- The Revenue also noted that the EoD submitted did not address the errors, although A's argument was that this was implicit in the accumulated adjustment.
- A's agent noted that it was always a consideration and the accumulation error tipped the scales towards making the EoD.
- The Revenue's witness noted that A's approach to calculating Depreciation may be unusual, but ultimately there was nothing unusual about adding back Depreciation.
- Revenue argued that there was no doubt about the law, the debate was a quantum issue. An EoD must relate to doubts about the application of the law, so this was not 'genuine'.
- A noted that the Revenue's lack of doubt was not relevant to the TAC, the only question was if the Appellant had genuine doubt as to the correctness of the treatment.
- Revenue noted that the EoD referenced there was a doubt but not the basis of same, and only referenced S.81 application of same was not actually a source of doubt.
- The TAC rejected the Revenue's attempts to broaden the argument against accepting the EoD during the hearing – concluding that their original letter is all that matters.
- The TAC did not accept that the consistent use of the treatment by A cast doubt over whether A had genuine doubt about the correctness of their treatment.

⇨ Appeal Upheld – Expression of Doubt was valid

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36TACD2023 – VAT 4-year Rule

- A Partnership registered for VAT from 1 October 2004 but failed to submit Returns from August 2005.
- In 2011 VAT Returns for 2005-2011 were finally submitted – some showed refunds
- The Appellant (A) asked the Revenue to offset the refunds against the liabilities.
- Revenue refused as S.865B / S.99 – over 4 years etc.
- A argued S.99 barred a refund claim but there was no such claim, just a request to offset the overpayments against liabilities.
- A argued that S.865B did not apply as it only applied to tax paid or remitted to the Revenue and no VAT had actually been paid to Revenue – VAT was paid to suppliers.
- Usual arguments about unjust enrichment, contrary to Human Rights, etc.
- Revenue argued S.865B also applied to sums 'required to be paid' to Revenue.
- A argued that the VAT periods pre-date 2012's introduction of S.865B.

- A argued that Revenue were trying to retrospectively apply S.865B and, at the time of the dispute, there was nothing in legislation preventing the offset.
- Revenue argued that S.99 already blocked the right to a repayment and no repayment meant nothing available to offset.
- The TAC noted the difference between legislation conferring a power upon the Revenue, e.g. to offset refunds, and conferring a right to the tax-payer.
- The TAC noted that A had made good arguments about the non-applicability of S.865B.
- However the TAC did not accept A's argument that, prior to S.865B, there was no basis to preclude an offset being made.
- The TAC agreed with Revenue's view that S.865B merely confirmed the law as it stood, an offset cannot be made if the refund was time-barred.
- The TAC disagreed that such an argument made S.865B unnecessary, noting that it contained exceptions to the rule etc.
- The TAC agreed with Revenue that the October 2011 submission date meant that no VAT refunds from 2005 to 2007 could be made via S.99.
- The TAC agreed with Revenue that no refunds meant no offset.

⇨ Appeal denied – VAT Refunds not available to reduce liabilities

⇨ Case is being restated for the High Court.

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37TACD2023 – PREM – Employee Expenses

- The Appellant, A Ltd, was a small family company that supplied stoves to 'trade'.
- There were two directors – one of which (D1) spent a lot of time 'on the road'.
- There was an audit, the Revenue raised assessments because they did not get all records, they later got records and this removed the CT and VAT revised assessments.
- All that remained were PREM assessments linked to the Revenue disallowing Travel & Entertainment expenses and imposing PAYE etc.
- Basically the Revenue was unhappy with the supporting documentation for many of the expense claims and thus disallowed 50% of those claims.
- D1 argued that his role involved travelling all over to meet clients etc and this led to costs like mileage, accommodation, lunches, tradeshows etc.
- D1 believed that all expenses were vouched and that Revenue had been provided with supporting documentation.
- Revenue noted that the Credit Card items did not contain sufficient information – lunches/beverages with no explanation, clothing, dry-cleaning etc.
- Revenue noted many large round-sum costs - €1,000, €3,000, €5,000 etc.
- During the hearing A Ltd produced a diary to show meetings etc – Revenue were given time to review but ultimately did not change their computations.

- A Ltd explained the nature of the costs – the round sum figures covered trade shows, clients had to be entertained, etc.
- Revenue noted that it had allowed 50% to cover bona fide elements despite the absence of proper supporting documents.
- The TAC noted Menolly Homes, S.886 obligation to retain records etc.
- The TAC saw no reason to change the Revenue's assessments.

⇨ Appeal denied – PREM was payable.

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38TACD2023 – Transborder Relief

- A was a director of UK Co, a company resident and trading in the UK.
- A had held 30% of UK Co but in February 2017 he transferred all of his shares to his adult children. Thus A ceased to be a 'proprietary director'.
- A claimed TBR for 2017 and 2018 – in both cases he made an Expression of Doubt.
- The EoD referenced that he travelled to the UK once a month for circa 3 days, but Revenue's Guidance indicated that a daily or weekly commute was required.
- The Revenue rejected his 2017 claim, he appealed. It seems 2018 was accepted.
- A argued that Revenue rejected his 2017 claim as he was a proprietary director, but failed to differentiate for the pay-periods when he was not a proprietary director (PD) etc.
- A argued that he had held his 'non-PD role' for > 13 weeks so TBR should apply.
- Revenue argued that TBR applies to the year of assessment, A only held one employment that year, as he was a PD at the start of the year then the relief could not apply.
- The TAC noted the legislation contained no basis for 'splitting the income'.
- The TAC noted that the legislation did not apply the relief to A in 'clear and unambiguous terms'.
- The TAC agreed with Revenue – being a PD disqualified the whole 'year of assessment'.

⇨ Appeal denied – no TBR for 2017

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39TACD2023 – FARM INCORPORATION

- The Appellant (A) was a sole-trader farmer but incorporated in circa 2005.
- A formed Farm Co which he and his brother held on a 50%/50% basis.
- A granted Farm Co a licence to use his land and the licence included *'the right to utilise any Basic Payment Scheme entitlements attached to the said lands'*.(BPS)
- They engaged Teagasc to deal with their BPS application and this was submitted to the DAFM (Dept. of Agriculture Food & Marine) in the name of the two brothers, not Farm Co.
- The BPS was physically paid to Farm Co.'s bank account.

- In 2019 the Revenue audited A's 2016 and 2017 submissions and raised assessments for circa €30k+ for both periods being the tax on the €78k and €76k BPS for those periods.
- Later the Revenue issued revised CT assessments removing the BPS for the company.
- A argued that the BPS were received by, declared by and taxed in Farm Co.
- The Revenue argued that the DFAM were not informed that the company was now farming the lands.
- The Revenue noted that the application to transfer the BPS can be made annually but this application was never made.
- A claimed that the submission of the BPS claims in their own names was an error by the Teagasc employee.
- A argued that he had no right to the BPS as he was not a farmer engaged in farming.
- He argued that the company's herd number was used in the application, which was a new number created by merging his and his brother's old numbers.
- There was no evidence of this claim that the merged number was the company's herd number (A explained this happened 17 years ago and they didn't keep old documents etc).
- A argued this case was different to 79TACD2021 as (i) the payments were physically paid to the company and (ii) the DAFM used the company's herd number.
- Revenue argued that the company was entitled to register for the BPS entitlements but never did so.
- The TAC noted that the argument that Farm Co was contractually entitled to the BPS did not absorb A of being taxable on said monies (Dolan v K, Nun's salary given to religious order etc).
- The TAC noted that the apparent error in annual application using the brothers' names rather than Farm Co would not explain the absence of the transfer documents.
- The TAC noted the absence of evidence that the herd number was that of the company

⇨ Appeal denied – H remained personally liable.

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40TACD2023 – VAT on Property

- A was one of 15 investors involved in a typical 'Hotel Apartments Scheme' in 2004.
- Basically they paid for 15 self-contained apartments to be constructed, rented same to the adjacent hotel, claimed the capital allowances, but the Hotel had the option to later buy the property from the 15-person consortium.
- In 2005 A leased the property to the Hotel owner and waived the VAT exemption.
- A reclaimed VAT of circa €717k on the purchase and development of the property.
- A charged 23% VAT on the rent and had paid over circa €35k by 2009.
- The 'tenant' went into liquidation in 2009 so the lease was terminated.
- The property remained vacant from January 2009 until August 2015.
- In 2015 A entered into a 'caretaker agreement' with P with a view to a later sale.

- In January 2017 A sold the property to P for €750,000, being €660,793 plus VAT €89,207. The sale closed in September 2017.
- The Revenue raised a VAT assessment for circa €594k, being the 'Cancellation Adjustment'.
- A argued that the imposition of the Cancellation Adjustment was in breach of EU principals as A was engaged in 'taxable activities' and thus his right to inputs should not be retrospectively compromised.
- A argued that Fiscal Neutrality must be observed and the Revenue had the right to restrict who can avail of the option but not to impose limitations on those that do.
- Revenue argued that the right to waive the exemption is a choice, and once made, the same rules apply to everyone.
- Revenue noted that the starting point is that all lettings are exempt, so there should be no right to complain about a measure that allows deductibility when none existed.
- While not clear, its possible that A's argument was that he was being punished for failing to find a tenant for so many years which was outside of his control.
- Reference was made to EU cases where it concluded that the taxpayer retained the right to Vat inputs even when the taxpayer could not use the goods or services for Vatable purposes due to reasons beyond its control.
- The TAC noted "*It seems to the Commissioner that section 96(12) does what the CJEU has stated is impermissible. One taxpayer who deducts VAT and then successfully lets out a property will be treated differently to another taxpayer who similarly deducts VAT at the outset but who is unsuccessful in attempts to let out a property, whether due to an economic downturn or some other reason beyond his control. The first taxpayer will not be required to pay a cancellation sum, or will pay a smaller sum, compared to the second taxpayer. This appears to constitute a breach of the principle of fiscal neutrality..*"
- Therefore the TAC noted that S.96(12) should be disapplied and thus the assessments reduced to €Nil.

⇨ Appeal Upheld – No VAT as Cancellation Adjustment contrary to EU law.

⇨ Case is being restated for the High Court.

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41TACD2023 - SPCCC

- The Appellant (A) started a relationship with P in 2013 and they had a baby boy in 2013.
- A and her son lived with her parents. P lived with his parents > 200km away and worked in his father's business. He would stay with A over the weekend.
- The couple were saving to buy a house and had a joint bank account for this purpose.
- In 2019 she made an application under the Help to Buy Scheme.
- In November 2021, they finally moved in together in their new home.

- The H2B claim triggered a Revenue review which led to revised P21s being issued for 2017, 2018, 2019 and 2020 removing the SPCCC among other credits.
- A's evidence was that P's job required that he stay with his Parents. She also noted that, other than their joint savings for their house, they kept their financial affairs separate.
- A accepted that she and P had an '*intimate and committed relationship'* but insisted that they did not "*live together*" until November 2021.
- The Revenue argued that they could not be regarded as living separately just because P lived with his family 3 nights per week.
- The TAC agreed that a couple can be regarded as living together even where one of them also stays elsewhere for work purposes.
- The TAC noted the longevity of their relationship, their shared future plans, etc.
- Interestingly the TAC did not reference that the 'house' they shared was her Parent's house!?
- The TAC concluded that A and P were living together and thus the Revenue were correct to withdraw the SPCCC.

⇨ Appeal denied – no SPCCC.

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42TACD2023 – IT (4 years)

- The Appellant submitted Income Tax Returns for 2013 – 2021 in March 2022.
- He was due refunds for 2015, 2016 and 2017 but the Revenue refused to issue same as > 4 years etc.
- The Appellant argued that the Revenue had demanded that he submit the Returns, and threatened to instigate legal proceedings if he didn't.
- The Appellant noted that refusal to issue the refunds was unfair and unjustifiable.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

43TACD2023 – IT (4 years)

- The Appellant submitted his 2017 Form 11 in August 2022.
- The Revenue refused to issue the refund arising for 2017 as claim was not made within 4 years etc.
- The Appellant noted his Agent was very ill and that he had difficult personal circumstances etc.
- .Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

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44TACD2023 – VAT

- The Appellant (A Ltd) was set up to provide 'on-line services'.

- A Ltd registered for VAT in March 2017 on the basis that it expected its turnover to be > €37,500 – but the expected turnover as per the TR2 was listed as only €5,000.
- Between 2017 and 2018, there was no VAT on Sales but circa €3k in VAT refunds.
- In January 2021 A Ltd sought to cancel it VAT registration – so the Revenue sought a repayment of the previous VAT refunds. An assessment issued for the €3k.
- A Ltd argued that the VAT claimed was for costs genuinely incurred in the course of the business and thus it should not be required to repay same just because the business failed.
- The Revenue noted that it is obliged to apply the cancellation of registration rules.
- The TAC agreed with Revenue.

⇨ Appeal denied – VAT must be refunded.

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45TACD2023 - CAT

- The Appellant (A) had lived in 'the Property' with her partner (P).
- P had jointly owned the Property with his ex-wife from 1973 until 2014.
- P and he ex-wife had divorced in the UK in circa 1980.
- A and P lived in the Property from circa 1980.
- P died in 2011 and bequeathed everything to A, including the Property.
- P's ex-wife initiated Court proceedings claiming ownership of the Property.
- In 2014 A and P's ex-wife came to a settlement wherein A kept the property and paid the ex-wife €8k towards her costs.
- The Property was valued at €150k on P's Death. The Revenue reduced this by €15k being €7k for mortgage repayments and €8k for the settlement amount.
- A CAT assessment was raised on A for €43,560.
- A argued that she lived there since 1980 and had paid 50% of the mortgage and the upkeep of the house since that time.
- A gave evidence of the costs incurred over the years – new chimney. Furniture, garden wall, boiler repairs etc, and the €9k-€10k she spent on legal fees on the above case.
- The Revenue noted that she had a holiday home so no S.86 Relief, and that they had only assessed €135k of the €150k and reflected A's €7k in mortgage repayments.
- The TAC noted that circa €24k additional costs incurred by A could be regarded as consideration paid for the inheritance – legal fees, stamp duty, the garden wall etc.
- The TAC concluded that she did inherit the Property but further reduced the value of her inheritance to circa €111k.

⇨ Appeal mostly denied – CAT was reduced but still payable

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46TACD2023 – VAT Registration

- Difficult case due to levels of redaction
- A Ltd was an Irish company with its registered office being C/O its solicitors.
- It had one Irish employee who worked from her home. Directors were not Irish
- A Ltd wanted to invoice non-Irish group companies to recover the employee costs – basically to recharge the salary using a "cost + 15%" approach etc.
- A Ltd tried to register for VAT on the basis that it is trading in Ireland and has an Irish base – being the employee.
- The Revenue refused arguing (i) the company is not managed and controlled here, (ii) it is not trading in Ireland and (iii) it has no base in Ireland.
- The Revenue's view was that the employee's sole function was to support the group and there was nothing that justified Irish VAT registration.
- The Revenue argued that A Ltd did not demonstrate that it had a 'vatable activity' here (S.5) or that it had Irish activity with other member states (S.9).
- The TAC noted Menolly Homes and that the Revenue has also asked the Appellant to provide evidence of its 'vatable business'.
- A Ltd argued that it had done so when it confirmed its employee's role etc.
- The TAC did not agree that this was sufficient.

⇨ Appeal denied – Revenue were correct to refuse VAT Registration

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47TACD2023 – IT (4 years)

- The Appellant submitted his 2016 Form 11 in December 2021
- Context was Revenue audit in 2019 and Appellant having to register for self-assessment.
- The Revenue refused to issue the refund arising for 2016
- Appellant's argument was that delays arose due to errors on ROS and Revenue delays in dealing with same due to Covid. They were ready in 2020 but Revenue delayed 2016's submission.
- Revenue accepted that 2015 , 2017, 2018 and 2019 were all filed in February 2020.
- Revenue accepted Covid caused delays and they should have deal with Appellant's queries faster.
- However Revenue also noted onus is on taxpayer to deal with their own taxes.
- The TAC referenced Revenue's role in the delay but Lee v Revenue and jurisdiction etc
- The TAC noted possible breach of Revenue's customer service charter and 'wholly unsatisfactory' etc but still, Lee v Revenue / Stanley v Revenue etc.
- TAC noted the legislation does not allow scope so…

⇨ Appeal denied – S.865 etc

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48TACD2023 – CGT (S.817)

- H owned 100% of Fam Co but transferred 90% to W in 2013.
- In 2014 H & W owned Fam Co with H holding 10% and W owning 90%.
- Fam Co had a BSV of circa €1.3m in 2014.
- W's 90 shares were converted in 2014 into 'A' share and their value was capped at €1.1m
- H owned 100% of Hold Co.
- In April 2014 W sold her 90 'A' shares to Hold Co.
- Fam Co loaned €1.111m to Hold Co to fund the purchase of the 'A' shares and the stamp duty on the acquisition.
- H & W disclosed the sale in their 2014 CGT Return and paid €362k in CGT.
- The Revenue commenced an Audit in 2018, their concern being S.817.
- The Appellant (W) rejected S.817 noting that she no longer held any shares in the company.
- The Revenue assessed the €1.1m gain as Sch.F income and sought an additional €243k in taxes – being €605k less the CGT paid.
- W appealed the application of S.817 arguing
    - No scheme or arrangement as required for S.817 to apply
    - Bona Fide commercial reasons for the sale
    - W's interest was significantly reduced
- The 'bona fide commercial reason' was later explained as W wanting to encash the value in her shares to fund personal borrowings.
- W argued that this was a simple sale of shares and thus there was no scheme or arrangement etc – just one simple disposal.
- W argued that S.817(1)(ca)(i) – which would link H & W for the substantial reduction test – can only apply if W held some interest in the company. As she had sold all of her shares, this deeming provision is not relevant.
- W also argued that S.817's significantly reduced test applied where Fam Co funded the transaction and this is not the case here.
- W argued that just because there was a tax inefficient way to extract funds does not mean using the tax efficient option is wrong.
- W noted that she could have argued for a higher value but didn't as she only needed €1.1m for her personal debts – if the motive was tax avoidance then she would surely have maximised her sale proceeds.
- W's argument was that no tax was avoided, she sold shares and paid CGT. She argued that the Revenue's case is built on something that did not happen – there was no dividend and thus no tax on a dividend to be avoided.
- Revenue noted S.20 and S.130 etc – basically dividends are taxed as income and this is a distribution etc.
- Revenue argued that onus of proof rests with W to show it was not motivated by tax saving as W did not give evidence as to the purpose of the transaction and thus could not be regarded as meeting the burden of proof.

- Revenue noted the series of transactions – why sell to a new company that can't afford to fund the purchase? Revenue suggested she could have simply sold her shares to Fam Co but didn't as she knew income tax would arise.
- Revenue noted that S.433 and S.432 etc meant that W was connected with both companies as she – via H (her associate) – controlled both etc.
- Revenue noted that W did not "substantially reduce" her holding as – via her relationship with H – she retained control of Fam Co and thus S.817 applies.
- Revenue again reiterated that no 'bona fide' argument was made by W.
- The TAC noted the 2013 transfer from H to W
- The TAC noted that, at the end of 2017, Hold Co had still not repaid the loan from Fam Co that funded the acquisition.
- The TAC noted that there was a scheme or arrangement put in place.
- The TAC did not agree that W must retain some shares for the substantial reduction tests to apply, retaining 'an interest' could include her spouse's interest etc.
- The TAC agreed with Revenue that W provided no evidence as to the reason for selling her shares and thus there was no 'bona fide' argument to be explored.
- W's explanation re. her personal debt was dismissed – "*A bald statement in written argument does not constitute evidence*".
- The TAC concluded that W did not meet the burden of proof via Menolly Homes

⇨ Appeal denied – Sale of Shares was liable to income tax

==

49TACD2023 – PAYE

- The Appellant (A) was a 'PAYE Employee'
- She received a refund in January 2022 based on her 2021 Form 12.
- In February 2022 her employer revised their payroll submissions.
- This triggered a revised P21 and a small liability arose.
- In a nutshell, the 1st refund was too high once the payroll was updated.
- A's argument was that the error was made by her former employer and that she never got the net pay the revised submissions would indicate nor the revised payslips etc.
- The original gross pay and PAYE deducted were both higher than the final gross pay and PAYE deducted.
- The TAC having examined the documents actually concluded that the correct Gross pay was neither – it was actually a lower amount again!
- None of this was A's fault and aspects were outside scope of TAC but bottom line is P21 should reflect correct position

⇨ Appeal partially upheld – Recalculated using revised Gross Pay etc

==

50TACD2023 - CAT

- The Appellant was a UK resident individual.
- She and her sister-in-law held a joint bank account when her sister-in-law died in 2016.
- The bank account had €68k in it and was put into joint names in 2015.
- The reason given was 'In consideration of taking care of the deceased when she was ill'.
- A asked the Revenue if she owed any inheritance tax because of the joint account and was told yes – the amount depended on who provided the funds in the bank account.
- A concluded the benefit was €34k so the CAT was €5,860.
- Revenue reminded A that the Form CA4 indicted that the deceased has provided all of the funding and this the benefit should be €68k.
- A submitted a revised CAT Return and showed tax payable of €17k. A revised notice was issued showing additional CAT of €13k incorporating €1,738 late submission surcharge.
- A's argument was that this was not an inheritance as she got the money prior to the death and could have spent it at any time.
- A's argument that it was not a gift but compensation and thus not all taxable.
- The TAC noted that no evidence was provided as to the reason the monies were deposited – Menolly Homes etc.
- The TAC concluded entire amount passed on death so CAT payable.

⇨ Appeal denied – CAT still payable.

⇨ Case is being restated for the High Court.

==

51TACD2023 - EIIS

- The Appellant – A Ltd – was incorporated in 2004. It raised circa €355k via the EIIS between 2012 and 2015.
- A Ltd applied for EIIS for €130k raised in 2017 and 2018 which lead to a Revenue Review.
- The Revenue had concerns about A Ltd's Business Plan and concluded that it was not a 'qualifying company' for EIIS purposes.
- The witness for A Ltd insisted that there was a Business Plan in 2010 but it was not submitted as the Revenue had asked for one that related to the 2017/18 period.
- A document was submitted from 2015 which was unsigned and when Revenue asked if there was a pre-2015 Business Plan A Ltd had replied 'No'.

- A Ltd's case was that they had already qualified for EIIS and had sent the Revenue a 'plethora of documents' as requested.
- Revenue noted that the absence of a Business Plan for 2012 meant that A Ltd could not have complied with the requirement to foresee the need for additional investment etc etc.
- The TAC concluded that A Ltd did not have a Business Plan which complied with the requirements of the Irish or EU legislation. No BP = No EIIS.

⇨ Appeal denied – Did not qualify for EIIS.

==

52TACD2023 – Preferential Loan

- The Appellant (A) was a Director in a Group. He owed circa €250k to one of these companies, but he was also owed money elsewhere in the Group.
- Revenue concluded that BIK @ 13.5% was due.
- He argued that this was not a 'loan' – the 2015 Accounts were not finalised – a Receiver was in place etc – and this prevented 'the contras' from being shown.
- A explained that he lost all access to records etc when a Receiver was appointed in 2016.
- He is adamant that he was owed money by the Group but as the Accounts had not been finalised and he has no access to records etc he cannot show this.
- The Group was not a real group but had Golden Shares etc. In reality A lost control in 2012 and it is not fair to punish him for not being able to access proof etc.
- The TAC noted the lack of evidence from A supporting his arguments.
- The TAC noted that it cannot comment on 'fairness' etc – Lee case etc

⇨ Appeal denied – BIK was correct so tax was payable.

==

53TACD2023 – Stamp Duty 4-year Rule

- The Appellant (A) purchased an apartment in 2016 which was liable to commercial rates and thus not liable to LPT.
- A's solicitor paid 2% stamp duty – incorrectly regarding these as commercial (2%) rather than residential (1%) in 2016.
- A had to get an LPT number when selling and this took time to organise.
- In 2021 they applied for a refund but Revenue refused as outside 4 years.
- A argued that this was 'a terrible interpretation of this rule' as Covid delayed everything.
- Revenue argued that > 4 years and anyway they only chased LPT number in 2021.
- The TAC noted that the legislation did not facilitate 'mitigating circumstances'.

⇨ Appeal denied – Too late to reclaim SD.

==

54TACD2023 – VAT Under-declared Sales

- The Appellant – A Ltd – was investigated by the Revenue in 2014.
- The Revenue raised assessments for VAT on circa €340k of unrecorded sales which A Ltd had labelled as family loans and currency transactions.
- A Ltd's witness explained that cash was very tight due to failed property investments post the 2008 crash etc. Hence he borrowed money from his brother.
- Another loan was linked to creating a charge over his property to mitigate against the risk that the bank would seek to take his home.
- Revenue's Council noted that by the time the charge was placed on his home the loan had been repaid and this was unlawful etc.
- Other family members gave evidence supporting the loan arguments.
- Note that, despite not being in the revised assessments, Revenue indicated an intention to assess further VAT which caused much debate.
- The Revenue noted the lack of contemporaneous documents supporting the claims that these were loans, and challenged the credibility around the explanations for the complexities around the events.
- The Revenue witness was an experienced inspector who remained adamant that the lodgements had not been properly explained.
- The TAC noted the witnesses evidence and that each had provided bank statements to show payments and repayments etc.
- The TAC did not agree with the Inspector's claim that the amounts were not 'adequately explained', and questioned other aspects of the Revenue's approach.
- The TAC noted that the Revenue had presented evidence of transactions recorded by other businesses (Purchases) which were omitted from A's Sales listings.

⇨ Appeal Upheld – VAT assessments reduced to Nil.

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55TACD2023 – Director's Loans

- A Ltd (the Appellant) was 100% owned by its Director, D.
- Following an audit in 2017, the Revenue raised CT, PREM, IT and LPT assessments
- The debate related to transactions between D and A Ltd including
  - A Ltd "paid" a deposit of €600k as a deposit on foot of an Option Agreement it had to buy a Patent from D for €2m – it was paid via credit against the Director's Loan A/C.

- A Ltd had contracted to buy properties from D

- A Ltd had paid €100k to D which the Revenue regarded as a loan to the Director.
- A Ltd had credited the €600k against the loan and thus there was no director's loan balance as per its Accounts.
- A Ltd noted that the Call Option would not be enforceable if no deposit had been paid.
- A Ltd argued that the Deposit was refundable and thus correctly treated as an asset in its Accounts and credited to the Director's Loan account.
- A Ltd had three witnesses including D, their Accountant and their solicitor.
- The Revenue called no witnesses but argued that the €600k did NOT constitute a repayment of the over-drawn Director's Loan balance.
- The Revenue argued that A Ltd acquired the right to buy the Patent when it paid the €1 consideration for the Option, so the €600k refundable deposit did not add anything.
- The Revenue noted that there was no evidence of D selling his IP during the relevant periods, or that A Ltd acquired anything that would justify the €600k payment.
- The Revenue noted that A Ltd only had cash of €240k approx. and thus could not afford to pay the €600k.
- Note that the Option term was later extended.
- The Revenue treated the €600k as a loan as well and raised CT on the re-grossed amount as this was a Close Company etc.
- The TAC noted that the evidence by the Witnesses supported A Ltd's argument that the Deposit was not a loan.
- The TAC agreed with A Ltd and the €600k was not treated as a new loan and could be used to reduce the old loan balance.
- The TAC did uphold the Revenue's BIK calculation which was to apply 13.5% BIK to the end of year balance as no monthly loan analysis was provided.

⇨ Appeal (mostly) Upheld – CT/PREM reduced.

==

56TACD2023 – VAT – Foreign Students

- The Appellant – A Ltd – recruited overseas students for Irish based schools and colleges. The company was NOT registered for VAT.
- A Ltd's fee covered transfers from the airport, assistance with VISAs, accommodation and the school's tuition fees.
- A Ltd argued that their invoices are basically a 'Cost +' approach and the '+' element is their commission.
- The Revenue noted that A Ltd relied solely on excel sheets and did not maintain proper Purchases and Sales Ledgers.
- The Revenue agreed that VAT did not apply to the disbursements, but it should apply to the commission.

- The Revenue registered A Ltd for VAT and raised assessments for 2016 and 2017 for circa €97k. A Ltd duly appealed.
- A Ltd argued that its services were exempt from VAT as its activities were 'closely related' to educational services. It quoted UK VAT legislation.
- A Ltd argued that its commission related to procuring and placing students in schools and thus was closely related to educational services.
- A Ltd noted how it had to recruit teachers to ensure students completed their studies in situations where a school went out of business.
- A Ltd further noted that 80% of its sales were to non-EU students and that the Revenue could only seek to impose VAT on sales to EU students.
- The Revenue argued that the Place of Supply rules meant Irish VAT applied as this is where the educational services were delivered.
- Revenue argued that the schools, not A Ltd, provided educational services.
- Revenue noted that A Ltd is basically paid a recruitment commission by the schools, and the legal relationship is between A Ltd and the schools – "it was irrelevant that fees were paid by the Appellant's clients to it first and then the Appellant paid the school an amount, minus its commission, since this equated to the school paying the Appellant a commission".
- In summary, the Revenue argued that A Ltd does not provide educational services but recruitment services, and that the Place of Supply was Ireland.
- The TAC noted that the Revenue had applied a concession by not applying VAT to the outlay element of the fees, but it had been inconsistently applied in the calculations.
- The TAC also noted that the Revenue's workings did not include the refund of fees to students when, for example, the school went out of business.
- The TAC noted S.34(g) and UK cases to agree that the Place of Supply was Ireland.
- The TAC noted that it was the schools and not A Ltd that provided education.
- Subject to some computational adjustments, the TAC agreed with Revenue.

⇨ Appeal denied – VAT was payable.

==

57TACD2023 – Anti-Avoidance CGT Losses

- Case involved S.811 Notices of Opinions – Lead case as 13 similar cases – total CGT losses were almost €36m!
- Revenue regard 2007 transactions as being 'tax avoidance' and raised assessments
- Appeal included technical arguments that S.811 process was not followed, the 'tax advantage' was incorrectly calculated, it was not tax avoidance anyway etc etc.
- Some grounds for Appeal fell away because of Kenny Lee decision.
- The Appellant (A) opened a €uro Bank Account and signed an International Swap Dealers Association (ISDA) master agreement.
- A entered into a Gilt Forward Contract (GFC) and a Foreign Exchange Contract for Difference (FECD).

- €10m in Irish Treasury Stock (ITS) was purchased and later sold.
- The gain on the ITS was similar to the loss on the FECD
- The €9m gain on the Irish Treasury Stock was exempt from CGT.
- The loss on the FECD as per S.546 is an allowable loss for CGT.
- It was accepted that the burden of proof rested with the Revenue as the case involved Tax Avoidance Transactions.
- A argued that the S.811 notices were out of time and lacked sufficient detail.
- A also invoked Droog noting that the Revenue's enquiries commenced > 4 years after the events but the Returns were full and true etc.
- The TAC noted some of the arguments re. time limits were outside his remit – Kenny Lee case etc.
- The TAC did not accept A's arguments about the Notices being incorrect – concluding that a tax advantage was obtained so A's submissions were 'moot'.
- The Revenue argued that the Droog time limit arguments could not be considered as they were not made in the grounds for the appeal.
- The TAC agreed with Revenue – **A can't now rely upon these time limit arguments as they were not included in the original grounds for the Appeal**
- The Revenue's expert witness claimed that the transactions were overly complex and included self-cancelling aspects – intimating the complexity was on purpose.
- In crude terms
    - A would agree to sell the gilts to the bank in 30 days' time for a price to be calculated at that date.
    - A would then buy the gilts that he has agreed to sell to the bank.
    - A would profit or lose depending on the purchase v sales prices
    - A would also have a foreign exchange transaction with the bank covering the same periods of the above.
    - The ultimate aim was to manage the loss risk.
    - As the gains are exempt and the losses allowable, the CGT Losses would always be far greater than the actual losses suffered.
- A's expert witness basically considered the transactions to be little more than 'hedging' and thus part of the routine risk mitigation that investors undertake ' *common place, prudent and …unsurprising..*'
- Revenue argued that these were not investments but carefully structured transactions designed to trigger matching gains and losses using the exempt status of the gains to general tax benefits from being able to use the losses.
- The Revenue argued that these were artificial losses and this S.811 applied.
- A argued that these were investments and using hedging did not change this.
- A argued that the transactions were independent of each other and had '*commercial validity in their own right*'.
- A argued that the Revenue can't use hindsight to question motive etc.
- The TAC noted that the result of the transactions was that A secured CGT Loss relief on almost €36m for a total consideration of €1m.

- The TAC believed that the losses were "contrived" and thus held for the Revenue that these were Tax Avoidance Transactions.
- The TAC reduced the allowable losses to the actual loss of circa €723k.

⇨ Appeal denied – CGT Loss Relief denied – S.811 Anti-Avoidance applied.

⇨ Case is being restated for the High Court.

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58TACD2023 - VAT

- The Appellant – A Ltd – applied to be VAT registered
- The Revenue reviewed the application and intended to visit A Ltd to discuss.
- The Revenue denied the VAT registration, A Ltd Appealed.
- A agreed that it had not yet started to trade but it had a business plan and was intending to trade and thus entitled to be registered for VAT.
- A noted that the Revenue went to the wrong address for the meeting and was rude and appeared to lack business acumen.
- Revenue noted that there was no employees, no real office space or workplace (just a hot-desk), no insurance policies in place, no company assets etc.
- Revenue concluded there was no evidence of a capacity to trade etc.
- Revenue noted the website was not 'live' but A argued it can't be fully functioning until they can sell etc.
- A noted the chicken-and-egg issue they and all new traders face – it can't engage a Payment Service Provider to allow on-line sales unless it has a VAT number, and it can't get a VAT number until it has sales!
- The TAC noted that A had a business plan, a marketing agreement, a content agreement, a gateway service agreement, an office and a web-site, and was in contact with a Payment Service Provider.
- The TAC concluded that A met the burden of proof and should be registered.

⇨ Appeal upheld – VAT registration should proceed.

==

59TACD2023 – IT (4 years)

- The Appellant submitted Returns for 2014 – 2017 in August 2022.
- All shows refunds totalling circa €18,700 but Revenue refused to issue same as > 4 years.
- Entire argument of the Appellant is redacted so no idea as to basis of their Appeal.
- Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

==

60TACD2023 – 4-years Farm Entitlements

- Case involved historic assessments raised by the Revenue for the SPS (Single Payment Scheme) by the DAFM (Dept. of Agri, Food & Marine etc).
- Appellant (A) farmed the land personally until 2011 – then incorporated the farm trade.
- They retained the land personally and rented same to the Farm Co.
- The herd number was transferred to Farm Co but NOT the SPS entitlements.
- In October 2011 DAFM paid circa €140k to A and A then transferred to Farm Co.
- The SPS was not included in A's Form 11 but was included in Farm Co accounts.
- The Revenue commended an audit for 2011 onward in May 2014.
- In April 2017 the Revenue raised an assessment on A for the SPS in 2011.
- A challenged the assessments via S.955 as > 4 years etc.
- A had an expert witness – an Agri Consultant – who explained the transfer process and how the May deadline for changes prevented the SPS being transferred to Farm Co.
- A also gave evidence that he was advised at the time that, as he no longer held the herd number, the SPS was not his income.
- A also had an IFAC expert as a witness and he reiterated that the SPS followed the herd number and the delay in transferring to Farm Co was because of DAFM deadlines etc.
- A's arguments included that the Revenue has no basis to re-open 2011, the failure to register the SPS for Farm Co was down to DAFM rules so no fraud or neglect etc.
- The Revenue explained that the delay in raising the assessment reflected attempts to try to resolve the matter with A and that A had requested time to allow the debate be had.
- Revenue's ultimate point was that the 2011 Return was incorrect and thus there was no time limit issue.
- Revenue also noted that A accepted that at least a portion of the SPS should have been included in his Return as they related to the pre-incorporation period. This alone is sufficient grounds to raise an amended assessment.
- Note the SPS were transferred to Farm Co in May 2012 – the next available "transfer window".
- The TAC noted the Revenue review commenced within 4 years, but that the Revenue had agreed to delay issuing a revised assessment. The TAC noted that the legislation did not afford the Revenue this choice.
- The TAC accepted that the 2011 Return was a 'full and true disclosure' in this particular case. Therefore the Revenue had no power to revise the assessment.

⇨ Appeal Upheld – assessment was out of time so no tax payable.

⇨ Case is being restated for the High Court.

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61TACD2023 – Under-declared income

- Case involved 2011, 2012 and 2013 and circa €1.6m in tax and a debate about the Appellant's actual taxable income levels.
- The Appellant (A) was a Chartered Accountant and a partner in a firm, which also had a consultancy practice carried on via a company. The partners also owned the property and rented same to the Accountancy Practice.
- The dispute revolved around the Revenue's and A's calculations of his 'taxable income' for the years under review.
- A argued that the Revenue were incorrect to disallow loan interest. He has refinanced his rental properties and gave €400k of same – circa 40% of the loan – to the firm for working capital and this 40% of the interest should be allowable.
- A argued that the Revenue were incorrect to base their income calculations on bank lodgements as the lodgements included back-payment of rent, advance commission fees and gross drawings (money paid out before taxes due by the firm).
- A's Return listed one rental property but he actually had 14 Irish and 1 UK rental property. The parties failed to agree on the calculation of his taxable rental income.
- A argued some of the lodgements related to a loan from a connected company and a BIK may be due but the lodgement was not 'income'.
- The Revenue argued that A had failed to meet the burden of proof via Menolly Homes and that he had failed to keep proper books and records via S.886.
- The TAC noted that A was a practicing Accountant and thus more than familiar with the importance of retaining records.
- The TAC noted that A provided 'little to no supporting documentation'.
- The TAC noted for example that A referenced a €900k loan from an investor and that a loan agreement existed but this was not furnished during the case.
- The TAC noted that A provided no evidence of ever giving back money to the partnership despite claiming to receive 'gross drawings'.
- The TAC noted the absence of proof to support the 'back payment of rent' claim.
- The TAC noted the absence of proof to support the 'advance commissions' claim.
- The TAC noted the absence of proof that €400k was loaned to the practice.
- The TAC noted many of the rental costs were not supported, but some were.
- The TAC revised some of the calculations but A did not succeed in proving that the additional tax was not payable.

⇨ Appeal denied – Additional income tax payable.

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62TACD2023 – VRT case

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63TACD2023 – Income Tax

- Case involved €224! Really it was about errors by the Revenue which upset A.
- The Appellant (A) was a widow as her husband died in 2021. There was some confusion about her 2021 Tax Credits and Revenue issued an incorrect one.
- When 2021 assessment issued it showed tax payable of €224 when A had expected to receive a refund. Revenue apologised for inconvenience and stress etc but….
- The TAC had sympathy but bottom line is tax was due.
- Confusion was because she was told she'd have full tax bands but as her husband's income was low the tax band was lower than expected – S.15 etc.

⇨ Appeal denied – income tax was due

==

64TACD2023 - CRSS

- Case involved dispute about whether Appellant (A) qualified for CRSS but difficult to follow as key details are redacted.
- It appears that A had a 'place of business' for VAT and argued this was sufficient to qualify for CRSS as Covid had devastating impact on their business.
- The address was the address of A's largest customer.
- Revenue noted that VAT position was different and bottom line is that A did not have a business premises where customers were prevented from visiting due to Covid restrictions etc. A sold via other outlets and mostly via on-line sales etc
- The TAC noted that the premises did not have a proper roof and thus concluded that it was not a building and therefore '*more properly considered an outdoor premises'*.
- As outdoor activities did not qualify for CRSS – A would lose anyway.
- The TAC also concluded that A's business was not conducted from that location anyway.

⇨ Appeal denied – CRSS did not apply.

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65TACD2023 - TWSS

- Case involved circa €5k and related to TWSS claim for domestic child-carer.
- The Appellant (A) claimed TWSS for childminder from March to June 2020.
- Note Childminder was not working during that period due to Covid.
- Revenue sought repayment of the TWSS as 'status of employer was not linked to the operation of a business', and did not meet 25% reduction in turnover test etc.

- A referenced that "the government were pleading with employers to maintain staff on their payroll" during Covid so she did.
- A noted that the then guidance and FAQs said nothing about domestic staff, unlike the EWSS guidance which clearly excluded domestic staff and thus A never claimed EWSS.
- A noted that, had she known that Revenue would deny the TWSS, she would simply have terminated the employment.
- A claimed that it was 'punitive and unclear' to impose this burden when the guidance was unclear and she could have made different decisions etc.
- Revenue argued that the legislation was clear that the TWSS was for employers with 'a business' and rejected A's claims that their guidance was unclear.
- Revenue argued that she did not have a business and even if she did then she did not meet the '25% reduction' test anyway.
- The TAC noted legislation and guidance always referenced 'business'.
- The TAC noted that they can't rule on fairness etc – Kenny Lee v Revenue etc.

⇨ Appeal denied – TWSS repayable in full

==

66TACD2023 – IT (4 years)

- The Appellant (A) submitted his 2016 and 2017 Returns in March 2022.
- A had contacted the Revenue in November 2021 as he was struggling to upload the Returns.
- Both assessments showed refunds of almost €4k each but > 4 years so Revenue refused to issue same.
- A explained his circumstances – martial breakdown, child had died etc.
- The Revenue refused to issue the refund arising for 2017 as claim was not made within 4 years etc.
- The Appellant noted his Agent was very ill and that he had difficult personal circumstances etc.
- Revenue noted the reminders they issued, and that they had sympathy but…
- .Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

==

67TACD2023 – Underpaid PAYE

- The Appellant (A) owed tax for 2014 – 2017 but insisted it was because his employer had made the mistake and not him.
- A argued this was double tax as employers had withheld tax and not Revenue were seeking the same tax from him.
- Revenue insisted that both Employers had remitted any tax withheld and A was given credit for same so there was no 'double tax'.
- Revenue accepted an employer had erred by applying cumulative rather than week-1 basis and another error was that the employer did not use up-to-date P2C etc but bottom line is that A still owed tax.

- A argued that Revenue should have pursued his employers as they had made the errors and not him.
- The TAC concluded that the Revenue had the power to recover the tax from A.

⇨ Appeal Denied – tax was payable

==

68TACD2023 – CAB case for VAT

- The Appellant (A) was involved in "Cars Sales and recovery" since 2015.
- In April 2017 A de-registered for VAT but later VIES showed that he was importing cars from the UK using his Irish VAT number to zero-rate the supplies.
- Revenue noted the discrepancy between A's VAT submissions and the expected VAT figures based on VIES so they reviewed the case.
- Following an interview with A the Revenue transferred the case to CAB.
- Revenue reviewed A's bank statements and other records etc and raised Vat assessment for €203k approx. to cover the January-June 2017 period.
- A argued that they only owed circa €7k via the margin scheme and provided the TAC with excel workings etc.
- Revenue provided meeting notes, excel workings, and referenced numerous invoices linked to UK businesses.
- A explained that they were engaged to collect cars from A and deliver them to B and as such they were only taxable on the commission paid for dealing with the logistics.
- A had provided the customers – the 'Promoters' - with his bank details so they could pay him for his delivery services.
- A then noted unusual transactions in his bank account which were conducted without A's knowledge or consent.
- A explained that he was 'duped' by the Promoters. After the Revenue visit, A challenged the Promoters but '*owing to threats to his welfare'* did not pursue the matter.
- Instead A closed the business and bank accounts.
- A noted that he did not benefit from these transactions and that the Revenue should be pursuing the Promoters.
- A argued that he had declared the actual amounts he received. In any event the margin scheme rules should reduce the VAT exposure.
- Revenue noted that A was responsible for his business notwithstanding any "*alleged misguided trust in providing the promotors with control over his bank accounts*".
- The TAC concluded that A could not benefit from the margin scheme as the various conditions were not met – e.g. the wording on various invoices was incorrect.
- The TAC noted A's claims about being duped but reminded A that "*ignorance of the law is no excuse*" and noted that it was the Revenue that contacted A and not vice versa.
- The TAC noted that A may not have benefited but….

⇨ Appeal denied – VAT was payable.

==

69TACD2023 – IT (4 years)

- The Appellant (A) retired in 2013 and received his pension in 2014.
- He received a lump sum from his pension including an element for 'spouses and children' which has tax deducted of €3,800+.
- A was only informed in 2022 that he was entitled to reclaim that €3,800 so he did.
- Revenue refused to issue the refund as > 4 years.
- A argued it was unfair as he did not know, Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

==

70TACD2023 – VAT & IT on Undeclared Sales

- The Appellant had not made any Returns so in 2015 the Revenue raised income tax assessments for 2014 – 2016 and VAT assessments for 2014 to 2017 – totalling €340k+.
- A appealed on the basis that Returns had since been submitted (the day before the hearing!?) and these figures were incorrect. A argued that the Revenue should replace these assessments to reflect the submissions or at least to explain why not.
- Revenue noted that A had various companies and had used their Vat numbers to import goods but the sale of those goods was not declared for VAT or income tax.
- Revenue noted numerous requests for records etc but that A had failed to provide any records, a Statement of Affairs, bank account details etc etc.
- Revenue provided Mutual Assistance Information from the HMRC, details from the German Revenue and various other documents.
- The TAC noted that A filed his 2016 ROI but did not pay any tax.
- The TAC noted that A did not provide any evidence to support his appeal or to demonstrate that the Revenue's figures were incorrect.
- Note that Menolly Homes featured prominently as it appears A's plan was to cross examine the Revenue on the basis of their figures but they can't really do this.
- A did not really address the issues during the hearing but rather wanted an adjournment as they have now submitted Returns and they wanted to examine the Revenue's evidence.
- The TAC rejected A's requests and noted the lack of engagement with Revenue.

⇨ Appeal denied – VAT and IT assessments remain due

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71TACD2023 – VAT

- The Appellant (A) was an Auctioneer and they imported items from a UK Firm of Auctioneers on behalf of its clients.
- A never owned the items, the client was the owner.
- A would not charge the client, A would earn fees from commissions charged to the purchasers of the items at auction.
- A reclaimed the VAT on importation of the items via the auctioneer's margin scheme.
- All sides agreed that the goods were imported into Ireland, that A received the goods as consignee while the clients remained the owners of the items, and that VAT of €250k+ was paid by A upon importation.
- A paid VAT @ 23% on its profit margin, and claimed a credit for the €250k+ , leading to a refund of €151k+.
- The Revenue argued that no refund was due as (i) import VAT was chargeable on the owners and not A and also (ii) no VAT arose on the sale of the goods, just on A's profit margin.
- A gave evidence that they had previously paid and reclaimed import VAT and the Revenue have never challenged same previously.
- A noted that imposing 13.5% VAT on the owners would result in owners refusing to sell their items in Ireland.
- A noted the ambiguity created by the margin scheme and that the end result cannot be that they are exposed to double taxation of VAT etc.
- A argued that the legislation deemed them to be the owner for VAT purposes and that Revenue were 'distracted' from the correct view by the large figure involved.
- Revenue argued that you cannot get credit for a liability that does not exist. The VAT liability belonged to the client and not A but A decided to pay same for commercial reasons – e.g. clients would not sell via Ireland if they had to pay VAT etc.
- Revenue also argued that the 'goods' were never used by A for 'Vatable transactions'.
- The TAC agreed with Revenue – the VAT on importation was the owner's liability and A only paid same because it agreed to do so with its clients because A regarded same as necessary to allow owners sell via Ireland etc.
- The TAC noted that there is no double tax – the owners are liable for VAT on the goods imported, A is liable for VAT on its fees being the 'margin' etc.

⇨ Appeal denied – VAT cannot be reclaimed.

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72TACD2023 – CGT 'Interest in Land'

- The Appellant – A – is a foreign company with a UK Permanent Establishment.
- A, via its UK PE, acquired a 'Portfolio' of Irish mortgages secured over Irish land.
- In 2016 A sold this Portfolio to an unconnected Irish company which triggered a debate about the relevant of S.980 and the need for CGT clearance.

- A debated the need for a Form CG50 with the Revenue and paid circa €1.1m on account on a 'without prejudice' basis to allow the sale proceed.
- In 2020 – conscious of the 4 years etc – A applied for a refund of the €1.1m. The Revenue refused and raised an assessment – hence the Appeal.
- A argued that the Portfolio was not an 'interest in land' and thus the sale is not captured by S.29 and thus no clearance etc etc.
- Revenue argued that the sale was a sale of 'land' for S.29 purposes but also that it was within the definition of 'relevant assets' for S.29(1A).
- A's witness explained that they buy distressed loans which both provided an income stream and a saleable item.
- He confirmed that the Portfolio was regarded as 'trading stock' for UK CT.
- He explained that circa 23.5% of the original Portfolio was sold, the rest was 'resolved' usually by selling the property held as security.
- There was a debate about the meaning of 'immovable property' and a debate about what constituted 'an interest in land'.
- Revenue argued that the legislation must be given its 'technical legal meaning' while A argued that words must be given their 'ordinary natural meaning'.
- The TAC noted the High Court rehearing of 75TACD2021 which related to the sale of the toll company.
- The TAC concluded that the Portfolio did constitute an interest in land.
- A also argued that – as a non-resident company with no Irish PE etc – its profits were outside the scope of Irish CT. Revenue argued this did not override S.29.
- The TAC noted that S.643 only applied if the 'sole or main objective' was to sell the land for profit and the evidence did not support this.

⇨ Appeal denied – Irish tax was payable

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73TACD2023 – TBC

- The link on the TAC web-site was still not working at the time of writing.
- Apparently the case involved a Partnership that acquired development sites and a company that developed the sites.
- The debate appeared to centre on where the liability settled when there was a sale – the company or the partnership.

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74TACD2023 – 4-years

- Preliminary hearing in relation to the Revenue's ability to ignore the 4-year rule.

- Revenue raised income tax assessment for €185k+ in 2011 for 2005. This is a 'lead appeal' in relation to a number of similar cases.
- Difficult to follow due to redactions but basically it involved value passing from one class of shares to another due to alteration of rights etc.
- No details of the 'distribution' or the eventual liquidation were included in the Appellant's (A) Income Tax Returns.
- The Revenue regarded the 'value shift' as liable to income tax, A did not, but the Appeal was delayed pending another case's resolution in the higher courts.
- A was challenging the Revenue's ability to raise an assessment for 2005 given > 4 years and his 2005 Return was a 'full and true disclosure' etc.
- Revenue argued that the 2005 Return made no reference to the share transaction in the CGT or any other section of the Return (if Return does not contain all material facts then no 4- year rule etc).
- The TAC noted Menolly Homes and that A did not prove that his 2005 Return was a full and true disclosure etc etc.
- The TAC also noted the absence of an Expression of Doubt.

⇨ Appeal denied – no 4-year protection for Appellant

⇨ Case is being restated for the High Court.

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75TACD2023 – Taxed when paid etc

- The Appellant (A) received circa €67k in pension income in 2021, €53k of which related to back-payments for 2017 – 2020.
- The Revenue included all of this and his OAPs in the 2021 assessment.
- A appealed seeking that the pension be spread over 2017 – 2018 -2019 – etc.
- Note A originally omitted the OAPs in his original Form 11.
- Revenue noted that income is taxed when paid – S.112…'shall'…no choice etc
- The TAC agreed with Revenue

⇨ Appeal denied – Back-payments taxed when received.

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76TACD2023 – VAT & CT

- The Appellant (A or 'the Company) operated a restaurant with both sit-down and take-away sales.
- The Revenue undertook a 'series of unannounced visits' in 2017 and then commenced an audit of A's business covering 2014 - 2017.

- During the audit the Revenue tested their ‘test purchases’ against A’s records.
- Revenue also sought to reconcile Credit-Care/Debit Card records with A’s EPOS records.
- Revenue noted gaps and discrepancies in A’s records.
- Revenue also noted VAT rates being incorrectly applied with 9% being charged when 23% should be charged etc.
- As A’s records were incomplete, Revenue used estimates for VAT and CT.
- A’s submissions included excel workings, the Revenue’s included 3 lever arch folders.
- Revenue noted A’s split of Food/Drink of 82%/18% did not agree with the EPOS records which recorded a 73%/26% split with 1% Vouchers.
- A explained that local competition meant that they had to offer ‘promotional offers’ hence their margins would be lower than average profit margins.
- A also noted that the Revenue’s estimates would not be reached even if operating at full capacity which in practice never happens.
- A explained that they changed till systems in 2014 which caused discrepancies which only came to light during the Revenue’s audit.
- A noted that some of the ‘issues’ raised by Revenue merely reflects normal practical issues – customers splitting bills, free-meals due to complaints, meals being recorded more than once due to additional courses being added as the meal progressed, etc etc – all of which cause discrepancies in the daily Z reads.
- A argued that sales are based on the weekly cash-sheets and that the Revenue were incorrect to base sales on till records.
- A noted that one of the Revenue’s so called ‘missing test purchase’ was recorded in the Cash sheet and this proof that it was properly recorded.
- A also noted that Revenue had reconciled the Credit-Card/Debit-Card sales to bank lodgements which proved the integrity of A’s records.
- A noted that it had made revised submissions due to the till errors and paid same to Revenue already. A also noted that they had to re-mortgage to fund this settlement.
- A argued that the Hanrahan case meant that the onus was on the Revenue to support their figures which they had failed to do.
- Revenue’s evidence included details of all of the gaps and inconsistencies in A’s records.
- Revenue noted that A had been given ample opportunity to reconcile or explain etc and either failed to do so or the explanations were “simply not credible”.
- The TAC noted the obligations upon A to retain proper records.
- The TAC noted that the Revenue did not have a burden of proof but in any event had provided A with detailed computations etc and that the Revenue’s workings were based on A’s own records including EPOS etc.
- The TAC noted A’s argument about inability to pay any further liabilities but that this was outside of the TAC’s remit.
- The TAC did make some adjustments to the assessments but tax remained due.

⇨ Appeal denied – VAT and CT was due.

⇨ Case is being restated for the High Court.

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77TACD2023 – IT (4 years)

- The Appellant (A) was challenging the Revenue's refusal to (i) allow her claim Mortgage Interest TRS on pre-2018 interest as > 4 years and (ii) on 50% on loan relating to Daughter's partner.
- She gave her daughter's partner €65k in 2006 to buy a home. She claimed TRS in 2022.
- Revenue noted that the claim was 16 years after the event and S.865 etc. She was given a refund for 50% of the loan for 2018 – 2020.
- Note 50% was disallowed as it related to a house outside of Ireland and the EU etc.
- TAC agreed with Revenue on both counts.

⇨ Appeal denied – S.865 etc

⇨ Note – going to the High Court?!?!

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78TACD2023 – Stamp Duty House v Commercial

- The Appellant (A) purchased a property in 2020 and paid 1% stamp duty on the basis that it was a residential property.
- SD of €7k (€700k @ 1%) was paid and an Expression of Doubt (EoD) made.
- The property was a commercial property but the contract was subject to change-of-use planning as A intended to convert and then live in the property.
- Revenue noted that the property was rated 'non-residential' as at 31 December 2019, the year prior to the execution of the deed, and thus 7.5% should be paid.
- A argued that it was residential, and even if it wasn't she'd be entitled to a refund of the extra SD anyway as she converted it into a dwelling etc.
- A argued that the SD definition was ambiguous and a 'practical' interpretation must be used.
- A argued that the sale was to close in January 2021 and had it done so then 1% would have applied because the 'rating on the year before the sale' would be based on December 2020 rather than 2019, but they expedited the sale to suit the vendor.
- Revenue noted that A had to use her own LPT reference when submitting the SD Return as the property did not have one.
- The TAC noted that the SD definition is linked to the local authorities rating system and that the property was rated as non-residential.
- The TAC noted that it cannot take a 'practical approach' and must apply the legislation.

⇨ Appeal Denied – 7.5% applied

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79TACD2023 – Customs & Excise

- Appellant (A) worked part-time and received social welfare and rent allowance.
- Revenue noted that she was selling cigarettes from her home and ceased same following covert visits to her home. This happened on two different occasions.
- On the second occasion, Revenue commenced an audit and estimated that she sold 41,600 cigarettes in 2014 and thus raised assessments for the excise duty on same.
- Revenue's evidence included numerous times they observed or themselves purchased cigarettes from her – including visits in January, April, May, November and December 2014. (The cigarettes never had an Irish stamp but sometimes had Ukraine, Latvian, Canary Islands etc).
- A's evidence was that she never sold any cigarettes and the ones ceased were from Latvia which she had for her own use. She also noted that the Revenue found no proof of money when reviewing her bank accounts.
- Revenue noted her bank card usage showed that she visited non-EU countries and argued the purpose was to buy illegal cigarettes.

⇨ Appeal denied – Excise Duty was payable.

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80TACD2023 – Undisclosed Sales

- The Appellant (A) was self-employed and the Revenue commenced an audit in 2018.
- The Revenue noted that proper records were not available for the initial audit meeting but the bank records that were there were used to highlight discrepancies between his turnover and the bank lodgements.
- The Revenue asked A to reconcile his bank transactions with his accounts.
- The case was delayed due to various reasons – bereavement, Covid etc. Eventually the Revenue got access to his bank accounts.
- The Revenue noted further inconsistencies and when A did not address same the Revenue raised income tax assessments.
- A explained that his customers only dealt with cash and he would often sell things on their behalf so some lodgements related to funds owed to his customers.
- A explained that he often borrowed from friends to fund up-front costs and a lot of his cash was used to repay these loans.
- The Revenue noted the absence of a bookkeeper and the poor quality of records being kept. Their figures were prepared using the bank lodgements.
- A noted that the Revenue's figures were not realistic given his low profit margins.
- Revenue noted that the lodgements and accounts did not agree and that A had been given ample opportunity to address same.
- Revenue also noted that A had failed to support his business expenses.
- The TAC noted A's obligation to keep proper records.

- The TAC did adjust the Revenue's figures as they failed to reduce the lodgements by non-trade income – social welfare, spouse's salary etc.
- The TAC noted that A provided no evidence to support his claims that he sold items on behalf of others and only kept a small commission.
- The TAC adjusted the assessments down but tax remained payable.

⇨ Appeal denied – income tax remained payable

⇨ Case is being restated for the High Court.

==

81TACD2023 – Income Tax

- In 2020 the Appellant (A) requested P21s for 2016 – 2018 and these showed tax due of > €13k. The Revenue collected the tax via reduction of his tax credits.
- A argued that he is a PAYE tax-payer and if he under-paid taxes for those years than the Revenue and/or Employer are at fault, not him.
- He was particularly aggrieved at the Revenue's ability to reduce his net wages without any consent or consultation as it had a terrible effect on their home finances.
- Revenue noted that the tax computations are correct and that the tax is due.
- Revenue noted that they had offered a longer collection period but that A had rejected same.
- The TAC noted that A was not so much appealing the assessments but the handling of his case, which is not a matter for the TAC.

⇨ Appeal denied – P21s were correct.

==

82TACD2023 - VAT

- The Appellant (A) operated a pharmacy and submitted revised VAT Returns for various periods in 2011 and 2012 showing VAT due of circa €114k.
- A later revised the Returns to show VAT payable of circa €25k.
- The Revenue issued an assessment in 2020 for the €89k difference – hence the Appeal.
- A explained that the original Returns were based on the old 'Chemist Scheme' whereas the revised Returns were based on the new 'Chemist Scheme'.
- A argued that the Revenue had no basis for rejecting his use of the new scheme, and that their assessment in 2020 was 'out of time'.

- A argued that the 2012 start date and turnover threshold imposed by Revenue for the new scheme had no basis in legislation.
- A noted that the old scheme was replaced precisely because it was inaccurate and not 'fit-for-purpose'.
- Revenue noted that the new scheme only applied from 2012 onwards and that A exceeded the maximum turnover level allowed under the new scheme.
- Revenue also noted that using the scheme led to errors in A's calculation as it accounted for 23% Stock as 0% Stock etc.
- Revenue noted that A has resisted attempts to explore the Stock issue.
- The TAC noted Menonlly Homes and A's refusal to engage on the Stock issue.
- The TAC noted that A must show that the original Returns were incorrect before he can replace them with revised Returns and concluded that he had not done so.
- The TAC did not agree with A's apparent position - the mere fact that the new scheme replaced the old scheme is sufficient proof that the old scheme was wrong.
- **The TAC noted that A was aware of the Revenue guidance re. turnover and start date for the new scheme when preparing the revised Returns. This amounted to 'negligence' and thus negated the 4-year rule**.
- The TAC agreed with Revenue – A disagreed.

⇨ Appeal denied – VAT assessment stood.

⇨ Case is being restated for the High Court.

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83TACD2023 - EWSS

- Appeal involved > €462k in EWSS claimed between 2020 and 2021.
- The Appellant (A Ltd) had circa 100 employees during this period and continued to trade during Covid, relying upon the EWSS.
- The Revenue were disallowing the EWSS claims arguing that the company failed to meet the 30% Turnover Reduction test and actually its turnover increased during this period.
- The company brought in employees from outside of Ireland and did not have Irish employees.
- A Ltd noted that they had tried to liaise with Revenue during the pandemic but many of their EWSS queries were not responded to.
- A Ltd explained that they based their EWSS claims on Customer Orders rather than invoices. Their comparison was based on Actual v Projected rather than 2019 and the Projected was based on a 'no Covid' scenario.
- A Ltd disagreed with Revenue's claims that their turnover actually increased arguing that the Revenue were incorrectly basing same on CT submissions and RCT submissions. However he later confirmed that turnover had increased 'a little bit' from 2019 to 2021.

- A Ltd explained that their Projections would have been better if Revenue dealt with their questions – there appears to have been multiple versions of the Projections.
- Revenue noted that the Projections submitted for the Appeal differed with previous versions.
- Revenue challenged some of the 2019 invoices on the basis that they looked like they were artificial and used to boost A Ltd's appeal.
- Revenue noted that the monthly projections involved repeat figures which cast doubt on the claim that these were updated via monthly reviews.
- Revenue argued that circa €390k of invoices had been misallocated from 2020 to 2019.
- Revenue argued that A Ltd's initial claim was based on turnover but they simply reduced same by 30% in their projections.
- Revenue argued that A Ltd later moved to a customer order basis but that many of the documents provided actually post-dated the work actually being done and thus could not be considered a 'customer order'.
- Revenue noted that the scheme required the claimant to retain supporting documents but A Ltd could not provide any evidence that it carried out rolling reviews.
- The TAC noted that the rolling reviews subsequently provided strongly suggested that no contemporaneous review was carried out.
- The TAC agreed with Revenue that many of the customer orders were so like the final invoices that they were in effect payment requests.
- The TAC effectively agreed with all of the Revenue's arguments either because the documents supported same or A Ltd did not do enough to disprove same.

⇨ Appeal denied – EWSS had to be repaid

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84TACD2023 – DTT Tie-breaker

- The Appellant (A) worked in Ireland as a locum doctor from 2016 to 2020. (He was not Irish but no mention is made of his home country so we will call it P).
- A paid no tax here as he claimed he was not resident here and did not have an Irish PE.
- Revenue raised income tax assessments for 2016 to 2020 for circa €260k.
- A explained that he retained his home in P and that one of his children stayed there when he and his wife and other child were in Ireland.
- A explained that he paid all utilities for the house, local social insurance, his local private pension, etc and he submitted tax forms in P.
- A also had his local GP issue a statement confirming that he and his family visited him in P regularly since 2016.
- A also retained his own practice in P and travelled to see his patients regularly.
- A explained that he came to Ireland to gain experience and was supposed to leave in 2018 but his role was extended on an ad hoc basis.

- In 2019 he was converted from self-employed to employment and explained it was because the HSE were not happy with his frequent travel to P.
- Under examination A admitted that he has said that he was normally resident in Ireland when applying for the VRT exemption when he brought over his car.
- He also admitted that he had told Revenue that the car was removed from Ireland in 2018 but Revenue found him driving same in 2019.
- They explored his days in Ireland v P and A was in Ireland for > 200 days each year.
- Revenue noted that they met with Dr. A in 2017 and told him to register his company for Irish taxes. A explained that the company was merely a business name – it was deregistered and A traded under his own name until becoming an employee in 2019.
- Revenue argued that he was based in a clinic and this was clearly a fixed base for DTA purposes – A had argued that he had no fixed room in the building.
- Revenue argued that A had permanent homes in both Ireland and P.
- Revenue noted that A had provided a 'huge amount of documentation' about P but very little about Ireland, e.g. no bank statements, lease etc were produced.
- Revenue noted that key details like the purchase of Irish cars and his spouse's Irish employment were not admitted until Revenue noted same.
- The TAC noted that it was not clear that A was resident in P, but this was assumed for the purposes of considering his resident position.
- The TAC noted A was resident in Ireland and (assuming) in P. Thus the DTA's tie-breaker clause was explored in detail.
- The TAC concluded that A did have a permanent home in Ireland as it was not simply a temporary arrangement etc. A had rented a 5-bed house which was fully furnished etc.
- The 'centre of vital interest' analysis is too detailed to explore so read the case itself.
- The TAC found it difficult to decide on the Centre of vital interest but agreed with Revenue's comments about the contrast between A's submissions re. P and the absence of documents about his time in Ireland.
- The TAC noted Menolly Homes and was surprised by A's approach given he held the burden of proof, but concluded that no decision could be made on this matter.
- Consequently the TAC based the residence decision on the third test – habitual residence – and concluded that this was in Ireland.
- As the TAC concluded A was resident here for DTA purposes, there was no reason to consider the 'fixed base' debate.

⇨ Appeal denied – Resident here so taxable here.

⇨ Case is being restated for the High Court.

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85TACD2023 – CAT – BR v Cash

- Case involved > €236k relating to Business Relief (BR) claim on shares in a family group.
- His father (F) gifted to the Appellant (A) shares (making up circa 28%) in the Family Group Hold Co. in 2013. He was also gifted shares in a different company at the same time.
- A claimed BR on both gifts – the Revenue accepted the BR claim on the second company but challenged same on the Family Hold Co gift.
- The Hold Co shares were valued using the Balance Sheet as at 31 December 2013 – the shares gifted were valued at circa €6.8m.
- There were large cash balances in the group and the Revenue queried these when auditing the case in 2016.
- The Revenue eventually raised an assessment restricting the BR on foot of the cash element not being RBP (Relevant Business Property) – A appealed.
- Revenue believed that 75% of the cash should be treated as non-RBP and adjusted the BR calculation on this basis.
- A's submissions detailed analysis of its performance and balance sheet tracking creditors, bank balances, etc.
- A gave evidence as FD for the Group and explained the importance of cash to the business and how there was often a large outlay made before any recovery.
- A explained that having strong reserves were critical in attracting customers especially post the financial crash.
- He also explained that the other assets were not 'readily convertible' into cash.
- There was circa €4.5m which A said was necessary to fund all of the different activities within the Group.
- A was adamant that all of the Group's assets including Cash was 'in use' for the business and used to fund and grow the businesses. A noted that cash was always held via short-term accounts rather than "*longer term "investment type products*"..
- He confirmed on cross examination that there was nothing in their agreement with their main supplier about holding large cash reserves.
- A could not explain why a valuation report was not provided with the appeal documentation, only the Accounts etc.
- The TAC noted that A's analysis of cash took creditors into account but not debtors and 'was not convinced' by A's explanations.
- A argued that there was no evidence of cash ever been used for purposes other than the Group's core business.
- A argued that – having redeemed the rest of F's shares, F loaned the funds back to the Group which proved that the group could not have had 'excess cash'.
- A noted that the Directors – rather than the Revenue – were best placed to decide the level of cash the business needs and that their sound management of such matters has enabled the Group to trade through the financial crisis.
- A noted that they have UK suppliers and thus some cash was held via stg& for hedging purposes, another example of cash 'in use' for the business.

- A also invoked the 4 year rule as the assessment was raised > 4 years after the CAT Return was submitted.
- A argued that (i) there is nothing in legislation to support the Revenue's treatment as excess cash is not an excepted asset and (ii) there was no excess cash anyway.
- Revenue argued that the Accounts showed 'investment type assets' of > €4m which could be relatively easily converted into cash. Thus the Group had access to €8.8m in 'liquid assets'. Note A had argued these 'investments' were mainly shares in subsidiaries and the trading premises and thus not investments or convertible etc.
- Revenue noted that A had amended the original Return as the value was slightly incorrect. Also A had agreed that another error was made by omitting details of previous gifts. These multiple errors were 'neglect' and thus no 4-year time limit.
- Revenue argued burden of proof was with A.
- Revenue argued that A must show that the cash was used 'wholly or mainly' for the purpose of the business for past 2 years etc.
- Revenue quoted UK case law which showed that it was not enough to show that the Group 'might need' the cash – A must detail the purpose and link to specific items etc.
- The TAC agreed that the 'neglect' in filing the CAT Return with errors meant that there was no 4 year time limit.
- The TAC did not agree with Revenue about the €4m+ being 'investment type assets' that were easily convertible into cash, agreeing with A's argument on this aspect.
- The TAC confirmed that "*As the Group held that cash figure in current or short term deposit accounts, the Commissioner concludes that those balances do not constitute the "making or holding of investments" are therefore not deemed an excepted asset under the provisions of section 93 (3) CATCA 2003*".
- The TAC also concluded that the cash was 'used for the purposes of the business'.
- The TAC found nothing in the legislation to support the Revenue's argument that the Appellant must pinpoint the exact use of the funds.
- The TAC noted UK case law is not binding but also that the UK legislation is slightly different to the Irish version as it references 'an asset required…for future use'.
- The TAC noted that funds would have been extracted @ 33% but leaving same in the company means higher tax – 53% - later. This implied that the cash was not 'excess'.
- The TAC concluded that BR did apply and that there was no need to restrict same.
- There were minor adjustments due to the aforementioned errors etc.

⇨ Appeal Upheld – BR did apply.

==

86TACD2023 – IT (4 years)

- The Appellant (A) submitted her 2016 and 2017 Returns in 2022 showing refunds of circa €50 in total!!
- A argued that she struggled with the tax system and denying her refunds of her own money was unfair
- Revenue argued no choice as …'shall…' etc.

⇨ Appeal denied – S.865 etc

87TACD2023 – IT (4 years)

- The Appellant (A) submitted her 2017 Return in June 2022 claiming a refund of circa €3,200.
- A noted that the delay was because she was caring for her mother who had cancer etc.
- Revenue argued no choice as …"…shall…" etc

⇨ Appeal denied – S.865 etc

88TACD2023 – VRT case

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89TACD2023 – CT – Inter-Group Charges

- Very difficult to follow as heavily redacted and 105 pages long. The case seems to have involved inter-group charges across a very large, multi-layered Group.
- The Appellant is A Ltd but there were actually 3 appellants.
- There were two different issues under debate (i) Recharge Payments and (ii) Expenses of Management.
- The Recharge Payments were monies received by A Ltd from various group companies in connection with a Group Share Option plan which A Ltd argued were capital payments for the issuing of shares (and thus share capital or share premium)but the Revenue argued were liable to CT via Case III or Case IV.
- The Expenses of Management were disallowed by the Revenue as not being covered by S.83. A Ltd insisted that these not only be allowed but increased.
- Anyone interested can read the case itself. For now it is sufficient to note that the TAC
    - The Recharge Payments were payments for shares and not 'income' but share premium.
    - Some of the Expenses of Management were excluded from S.86, others were not.

⇨ Appeal Partially Upheld – CT assessments reduced.

⇨ Case is being restated for the High Court.

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90TACD2023 – Help to Buy

- The Appellants – H & W – were challenging a 2021 assessment relating to circa 60% of the Help to Buy payment previously received by the couple, H & W.
- H & W entered into the contract to buy the house in 2017 and claimed 5% via the HtoB.
- H & W closed the sale and moved into the house on 1st June 2018.

- They put the house up for sale in February 2021 and sold it that May.
- S.477C provides for a recoup of the HtoB payment if the property is sold within 5 years – the recoup being staggered 100% - 80% -60%-40%-20% depending on when sold.
- H & W argued that they rang Revenue for guidance before selling and were simply told to revert after the sale.
- H & W explained that the sale was supposed to be 31st May but they rushed same to close a few weeks earlier.
- H & W's argument was that Revenue should have explained the claw-back regime and if they knew they could have waited until 31st May and thus only paid back 40%.
- H & W wanted the TAC to apply the 40% rather than 60% reduction.
- The TAC noted its role is not to consider what is fair etc – Lee v Revenue etc.
- The TAC noted that it would still be 60% even if they had waited to 31st May!

⇨ Appeal denied – 60% of Help to Buy payment had to be repaid

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91TACD2023 - Home costs as PAYE deduction

- The Appellant (A) is a Civil Servant and during the Covid period he worked from home.
- The home is located in an area with high levels of radon and in 2020 A engaged an EPA approved radon tester who issued a report recommending that radon remediation works be done for safety reasons.
- Under evidence A admitted that he would have done this work anyway whether he was working from home or not.
- A claimed the €3k+ costs as an expense against his salary, the Revenue rejected same.
- Argument was basically around the 'wholly, exclusively and necessarily' criteria.
- A relied upon non-tax legislation about work-place safety.
- A argued that the Revenue's approach to S.114 and in particular to the 'exclusively' element created an 'absurd' situation where no cost can qualify.
- A argued that he was being unfairly discriminated against considering the eWorking, flat rate expense and other regimes etc
  "*"The very existence of these special procedures attests that Revenue is not administering Section 114 TCA equitably. There is a clear bias in the concessions afforded to Revenue's favourites."*"
- Revenue relied upon various Irish and UK cases but mainly on S.114 which was both clear and unambiguous.
- The TAC noted its scope and Lee v Revenue etc.
- The TAC noted A's evidence that the work would have been done anyway.
- The TAC reference all of the clichés – duality of purpose, wholly and exclusively etc.
- The TAC noted that there was no conflict between S.114 and EU law.

⇨ Appeal denied – Not ‘wholly and exclusively’ etc

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92TACD2023 – Transborder Workers Relief

- The Appellants (A & B - two brothers) were Irish resident and claimed TWR for 2015 – 2017.
- Their employment was with X Ltd and they were directors of the company.
- X Ltd had 1,000 ordinary shares and 4,000 ‘A’ ordinary shares. A & B had each held 500 and their brother held the 4,000 ‘A’ shares.
- The shareholdings changed in 2016 when 200 of their 500 shares were transferred to their respective children by A & B.
- As per Revenue, A & B always held > 15% of the voting power.
- A & B argued that they were entitled to TWR as they held < 15% of the shares and therefore they were not proprietary directors.
- The core issue in the appeal was whether A & B controlled more than 15% of the ordinary share capital – the ‘control’ test in S.472 (as opposed to the ownership test).
- A & B argued that the Control Test is about control of the share capital and not about control of the company.
  “*“proprietary director" means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, <u>more than 15 per cent of the ordinary share capital of the company</u>;*”
- A & B noted that all of the shares were part of the share capital and thus A & B could not be said to have had control of the share capital.
- Revenue argued that ‘control’ and ‘ownership’ are differentiated in S.472 because they mean different things. Control is exercised by voting – it cannot be exercised in any other way.
- A & B agree that they control the company but argue that this is not the test to be applied – the test is about control of the share capital.
- A & B argue that the Revenue are conflating control of the company with control of the shares but there is no basis for doing so.
- Revenue argue that this approach is not plausible and the reference to control must be a reference to voting power.
- Revenue noted that the RBO referenced A & B as ‘directors with significant control’.
- There was a debate about the Revenue’s ability to raise the assessments but TAC noted that this was outside of its jurisdiction.
- The TAC agreed with A & B – control of the company and control of the share capital are two different things.

⇨ Appeal Upheld – They are not proprietary directors and TWR is available.

⇨ Case is being restated for the High Court.

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93TACD2023 – VAT Registration

- The Appellant (A Ltd) applied for Irish VAT registration in July 2022.
- The Revenue requested various details – description of business etc
- After A Ltd responded, the Revenue decided to visit the place of business. This was an unannounced visit and no one was there when the Revenue called.
- The Revenue then disallowed the VAT registration application.
- A Ltd explained that it imports goods into Ireland from its non-Irish HQ, and sells these on to Irish and EU customers.
- A Ltd also provides hands-on training about how to use the products.
- A Ltd is looking for Irish staff and in the meantime uses staff from a non-Irish branch to assist in the Irish activities.
- A Ltd provided evidence of goods being shipped into Ireland and from Ireland to EU customers.
- A Ltd showed evidence of the directors travel to/from Ireland, various invoices etc.
- A Ltd complained that a once-off visit was not a reasonable basis to conclude anything.
- Revenue noted that A Ltd has no Irish staff, no Irish website and appears to use a virtual office and 'simply rents an office there from time to time'.
- Revenue did not accept that A Ltd showed any evidence of a trade or a capacity to trade in Ireland. (**A Ltd noted that the visit report from Revenue referenced discussions with the receptionist who confirmed that someone from A Ltd was in the building roughly once a month**).
- The TAC noted the evidence of the Directors and other employees travel, the import of goods, the sales and shipping to EU customers etc.
- The TAC noted the Receptionists account and the Director's Travel documents were consistent, as were the supplies in terms of timing.

⇨ Appeal Upheld – VAT Registration should be issued.

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94TACD2023 – CGT Debt on Security

- The Appellant (A) acquired circa 3,000 'units' in PLC in 2005 and 2006.
- A 'unit' were comprised of a mixture of a zero-coupon loan note and 'A' shares – these had a nominal value of €90 and €10 respectively.
- PLC went into liquidation and A lost all of his money – circa €200k.
- A claimed this as a CGT loss against gains in 2015, 2016 and 2017.
- The Revenue disallowed the loss claim and A appealed the resulting assessments.

- There was a debate about the 4-year rule for 2015.
- A argued that the loan note and A shares were 'stapled investments' and one cannot be sold without the other.
- A argued the legislation does not define 'Debt on Security' and relied upon case law – Irish, UK and Australian - to support his argument that his investment was etc.
- A's core argument was that the loan notes and shares must be taken as one investment and the loan notes on their own made no sense etc etc.
- Revenue also referenced case law but mainly to argue that the loan was a simple debt and interpretation can't create something that isn't there.
- The TAC noted that there is no 4-year limit if Revenue suspect Return was not a full and true disclosure.
- The TAC noted that the concept of 'stapled securities' is not defined in Irish legislation and has not been considered in Irish courts.
- The TAC noted that, while contractually linked at the points of purchase and sale, the shares and loan notes are different assets and thus must be considered in isolation.
- On this basis, the loan note cannot be regarded as a 'debt on security' as it had none of the characteristics of same – can't increase in value, not marketable etc.
- The TAC therefore agreed with Revenue, and in doing so noted that 2015 was now on the table because the original Return did not contain a full and true disclosure!

⇨ Appeal denied – CGT loss was rightly disallowed.

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95TACD2023 – PREM – Directors' Expenses

- The Appellant (A Ltd) was owned by D1 (99%) and D2 (1%) and provided services to UK customers mainly via D1.
- Case appeared to involve a medical service company with D1 being the medical person and the customers being hospitals in the UK.
- During an audit in 2016, the Revenue concluded that some of the expenses in A Ltd's accounts were not eligible deductions, and some of the salary paid to D2 should have been allocated to D1.
- The documents included employment contracts for D2, engagement letters from the UK customers, D1s mortgage statements, expense receipts, etc.
- The Revenue had disallowed items like UK Accommodation, UK car rental, fuel allowance, energy, car insurance, mobile phone, courses, etc.
- The TAC also requested D2's bank statements to see if he actually did receive his net salary – they were inconclusive at best.
- The Revenue had basically left €3,198 of the €32k salary allocated to D2 in place but reallocated the rest to D1.

- D1 gave evidence and noted that he was not related to D2, D2 had a range of duties, and that the Revenue's €3,198 would breach the minimum wage requirements etc.
- D1 explained that he was unable to drive and D2's duties included driving him.
- D1 explained that the UK costs reflected that he had to stay in the UK for circa 22 weeks as part of his job etc.
- Revenue argued that they could find no evidence of any salary payments to D2.
- Revenue argued that D2 did not have the qualifications necessary to do the work of A Ltd and thus the work undertaken was performed solely by D1.
- Revenue noted the small salary paid to D1 comparative to his outgoings and concluded that all bar €3,198 of D2's salary was actually D1's income.
- Revenue based €3,198 on its presumption that D2 worked circa 5 hours per week and the appropriate rate of pay was €12.30.
- Revenue noted that un-vouched expenses were a taxable perq via S.117 and only if S.114 applied would these be allowable for the company and not taxable for D1.
- Revenue noted 'round sum payments' /..wholly & exclusively…etc.
- The TAC noted that D1 performed all of the work undertaken by A Ltd.
- The TAC noted that no evidence was provided that D2 did any of the duties referenced in his employment contract.
- The TAC concluded that A Ltd failed to demonstrate that any of D2's activities relate to A Ltd's business.
- The TAC noted that D2's bank statements did not reconcile with his salary entitlements.
- The TAC noted that many of the expenses were un-vouched and / or personal in nature, including D1's mortgage payments.
- The TAC concluded that the Revenue were correct to disallow the expenses.
- Consequently, the TAC noted that the Revenue were right to apply PREM for these expenses – is not S.81 then S.117 applies etc
- The TAC concluded that the 'excess' salary for D2 probably was for D1 – noting that D1's own salary was not sufficient to cover his living costs.
- The TAC noted that converting expenses to salary and moving salary from D2 to D1 meant that the CT did not change.

⇨ Appeal denied – PREM was owed

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96TACD2023 – VRT case

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97TACD2023 – PUP – P21

- The Appellant (A) received PUP in 2020 so her P21 showed tax payable of circa €1,336.
- Initially this was to be collected via offset against her tax credits for 2023 – 2025.

- A’s 2021 P21 showed a refund of €1,434 – which was offset against the above 2020 underpayment and her LPT liability.
- A contacted Revenue to explain that she could not afford to forgo her refund and asked that the underpayment be collected via her tax credits as originally planned.
- The Revenue refused, A appealed.
- A referenced the Citizen’s Information website - and conversations with various TDs - which said that Revenue can collect the tax on PuP via offset against tax credits over 4 years etc. She understood this was to ‘avoid hardship’ so she should benefit from same.
- The TAC noted that the Revenue’s own guidance was linked to the CI guidance and it made it clear that future refunds would be used as well.
- Revenue had sympathy but the law permits them to do this so……
- The TAC noted Less v Revenue and its limited scope.

⇨ Appeal denied – tax paid via offset of refund

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98TACD2023 - SARP

- A moved to Ireland in February 2022 via an internal transfer within his employer’s company. He applied for a PPSN and received same in May.
- A then set about getting a Public Services Card (PSC) which took until June.
- On 24th June he submitted his form SARP 1A.
- Revenue rejected the claim as his application was not submitted within 90 days of his arrival in the State. Revenue has sympathy but the law is the law etc.
- A explained the cause of the delay and noted that the Company had informed the Revenue of the Form SARP etc.
- In evidence, A explained that he tried to upload the SARP 1A via MyEnquiries in February but could not do so as he did not have a PPSN.
- When he tried to upload again in May via MyEnquiries, it failed and he was told he needed to obtain a PSC.
- A explained that he spent 6 hours waiting for an interview to get his PSC.
- Revenue noted that there was no room for concessions – albeit the 90 days had been temporarily extended to 6 months during Covid.
- Revenue noted that the Employer could have uploaded the form without a PPSN – it would not have been processed until the PPSN issued but the 90 day rule would have been met.
- The TAC spent a long time dissecting the legislation including a deep-dive into the importance of the placement of commas!!
- The TAC noted that the Revenue was incorrect in insisting that the 90 days applied to when they receive the document, and the 90 days only referred to when the employer must certify the document, which happened in February.

"*in respect of whom the relevant employer or associated company certifies, in such form as the Revenue Commissioners may require, within 90 days from the employee's arrival in the State to perform the duties referred to in paragraph (b), that the individual complies with the conditions set out in paragraphs (a), (b) and (c)*"

- The TAC concluded that the Revenue's guidance was also incorrect to reference terms like "failure to submit the form within 90 days" etc.
- The TAC noted that it was 'near impossible' to obtain a PPSN within 90 days and the only way to comply with the Revenue's approach is to post an incomplete form and let it sit idle on a desk for months until a PPSN issues.
- The TAC concluded that this lack of process justifies her view that the 90 days applies only to the certification and not the submission.

⇨ Appeal Upheld – SARP was available.

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99TACD2023 – Directors Loans v Bonuses

- The Appellant (AU) is an unlimited company – D was its Director and Owner.
- In 2010 D transferred his sole-trade practice to AU and valued the goodwill attaching to his practice @ €750k.
- AU made a series of payments to D during 2012 – 2016.
- The Revenue believed that these were untaxed payments and sought PREM. AU argued that the 2012 payment was a loan, the rest were payments for his Goodwill.
- In 2012 D's salary was €55k but he received €1.177m from AU. There was no mention of this being a loan in AU's accounts.
- Smaller amounts were paid in 2014, 2015 and 2016. AU argued these payments were for the Goodwill purchased from D in 2010. Revenue assessed them via PREM.
- Revenue raised 'alternative assessments' wherein the €1.177m was treated as a preferential loan and thus an annual taxable perquisite arose on the deemed interest.
- The Goodwill argument was problematic – AU had informed Revenue in 2016 that there was no goodwill. In the CMC before the case, AU indicated that their case included the Goodwill argument but then omitted same in its updated submissions. This led to arguments about 'new grounds' etc etc.
- AU had explained that the 2012 loan was to allow D purchase investment properties and that D had started to repay the loan via actual repayments, salary forgone and paying costs on behalf of AU.
- AU argued that the fact that the payment exceeded its turnover was proof that it was a loan and not a salary!
- AU also noted that €210k had been repaid to it by D in 2018 and 2019 although Revenue did not accept these as being repayments of the €1.177m.

- AU argued that the Revenue's refusal to accept the €750k goodwill argument was that D moved from being a debtor of AU to a creditor of AU.
- AU argued these later payments should also be treated as preferential loans.
- Revenue quoted various cases – including Menolly Homes – all of which basically emphasised that the onus to prove the 'loans' argument lay with AU.
- Revenue noted the absence of witnesses and documents supporting the 'loan' argument.
- Revenue noted that the documents that were available contradicted the loan argument – including the 2012 accounts etc.
- Revenue objected to AU being allowed to introduce the 'loan' argument for the post-2012 payments given this argument had not been made previously.
- In any event, Revenue noted that there was no evidence to support the loan argument for the later payments either.
- The TAC noted AU did not call any witness and 'mere assertions' by its council were not sufficient etc.
- The TAC basically agreed with Revenue and all the payments were 'remuneration'.

⇨ Appeal denied – PREM was payable.

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100TACD2023 – CGT Losses

- The Revenue audited the Appellant's (A) 2008 – 2015 affairs and raised CGT assessments for 2014 and 2015.
- In both cases A had sold shares and claimed that CGT losses being carried forward meant that no CGT was payable.
- A also argued that the Revenue failed to take account of 'certain acquisition costs'.
- The TAC refused to accept A's arguments about acquisition costs as this argument was not properly outlined in sufficient time. This decision was dealt with via a separate written decision by the TAC.
- The TAC noted that the argument about historical CGT losses was first made in 2017!
- The TAC also noted that some documentation was produced very late in the process and therefore there was doubt about its admission.
- A's losses were complicated and linked to companies in liquidation, options, marketable securities, debt of security etc etc.
- Revenue argued that the negligible loss claimed by A only arose in 2017 and thus could not be relevant for 2014 and 2015. In any event Revenue noted the absence of evidence that this was a 'debt on security' as argued by A.
- Revenue also noted that A had failed to show that the older losses had not already been used up before 2014 and 2015.
- The TAC noted that A did not give evidence at the hearing.

- The TAC noted the absence of evidence to support A's claim that one of the losses was actually a 'debt on security' and not just a debt.
- The TAC noted the absence of evidence around certain other loss claims and again noted that A did not even attend the hearing yet alone give evidence.
- The TAC refused to accept the CGT losses so the assessments stood.

⇨ Appeal denied – CGT was payable

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101TACD2023 - VAT

- This Appeal involved €4.3m+ in VAT which the Appellant (A) had claimed over the course of 2015 – 2019.
- **Hard to read as key aspects are redacted** – but case involved A which provided training services and the fact that A engaged X as a subcontractor.
- It appears that A invoiced X and then X invoiced A – and it was the VAT treatment of the invoices to X by A that caused the Appeal.
- In 2015 A asked Revenue to clarify is they accepted that the training they provided was VAT exempt
- The Revenue confirmed that it was not 'of a vocational nature' so VAT @ 23% should be charged, so thereafter A charged VAT on its invoices to X.
- There was on-going correspondence and the Revenue again reiterated its position in 2016 and 2018. A also requested a review and in 2019 the review officer again confirmed the 'plus VAT' position.
- In 2019 A sought a refund of the VAT paid as it contended the training services it provided were exempt from VAT. Revenue refused – hence the Appeal.
- A argued that it provides VAT exempt vocational training services.
- A argued that the Revenue's position breached the fiscal neutrality principle as it discriminated against smaller education suppliers who can't take on the large contracts 'on their own' whereas larger suppliers can.
- A argued imposing VAT simply because a sub-contractor was used distorted the market in favour of larger suppliers.
- A introduced the 'closely related' argument at the Appeal which Revenue objected to as being 'new grounds' etc.
- The TAC noted that this argument was not in the Notices of Appeal or the Statement of Case or the 'Outline of Arguments'.
- The TAC noted that A provided no explanation as to why this argument could not have been included in the earlier submissions.
- The TAC refused to allow this argument as it was not previously listed in the 'grounds' for the appeal.

- A argued that it was the only party authorised to deliver the training and outsourcing to X did not alter this fact.
- Again **it is very difficult to follow as the coverage of the 3 Witnesses called by A is very heavily redacted**. The case seemed to involve A engaging X but also suppling staff etc to X to enable X provide the training and the witnesses explained the logic behind this 'circular arrangement'.
- Of interest is that A called 3 witnesses and the Revenue called none.
- Revenue argued that A is not providing vocational training – it is in fact X that provides the training and A provides various services to enable X provide the training.
- Revenue argued that A provided services to X, but it was X that provided the vocational training to the students, so A can't avail of the exemption.
- **Most of the Revenue's 'key points' were redacted**.
- One of the core items under debate is if A is actually providing training or merely providing personnel to X so it can deliver the training.
- The TAC's analysis **is also heavily redacted**.
- The TAC accepted A's position that it was only body authorised to deliver the training.
- The TAC concluded that the agreement between A and X involved A providing training to X and not just personnel.

⇨ Appeal upheld – VAT should be refunded.

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102TACD2023 – IT (4 years)

- The Appellant submitted Income Tax Returns for 2014 and 2016 in April 2021.
- Refunds arose for both years but Revenue refused to issue same as > 4 years etc.
- The Appellant argued that (i) he was not aware of the 4-year rule and also (ii) it was unfair because if he owed tax then the Revenue could collect so why can't he have his refunds etc.
- Revenue argued S.865…no choice etc
- The TAC noted Perrigo Pharma, Lee v Revenue, etc

⇨ Appeal denied – S.865 etc

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103TACD2023 – CT on Debt forgiveness

- The Appellant (A Ltd) was assessed for €755k in corporation tax following the write down of a €6m loan – A Ltd appealed the assessment.
- A Ltd borrowed €9.5m in 2006 to buy land as A Ltd's trade involved buying and developing land for residential development.
- Due to the economic crash, the development never happened and the land was carried in the Accounts as trading stock.

- A Ltd repaid circa €3.5m of the loan and in 2016 the remaining €6m+ was forgiven following the payment of a settlement amount of circa €250k.
- A Ltd had CT losses c/f of €7.1m+ in 2016 and the Revenue reduced same by the €6.4m loan write-off.
- A Ltd's witness was their Financial Director and he explained that the 2006 land involved 19 acres with zoning but no planning which cost €8.6m.
- The witness confirmed that they tried to sell the land in 2016 but didn't as the only offer they received was for €170k. The site was transferred out of A Ltd in 2017.
- A Ltd's argument was that the debt forgiveness was a capital transaction rather than an income transaction. Therefore it never adjusted its losses for the debt release.
- A Ltd argued that 'profits' are the difference between income and expenses and case law makes it clear that only income should be taxed.
- A Ltd referenced various cases – UK and Irish – to support its view of S.76A that accountancy principals are subject to adjustments etc.
- A Ltd argued that S.87 did not apply because no tax deduction has even been claimed by the Appellant.
- A Ltd argued that the loan was used to buy an asset and the fact that profits would have arisen from developing that asset does not stop the loan from being 'capital'.
- The Revenue argued that S.76A makes it clear the write off of the loan should be treated as a Case I receipt.
- The Revenue noted that A Ltd booked the debt release as income in its 2016 P & L.
- The Revenue agreed that accounting principles can be adjusted but the circumstances that permit such adjustments were not present in this case.
- Case I income follows the accounts unless an adjustment is required or authorised by law – e.g. tax legislation. Revenue saw no basis for any adjustments.
- Revenue argued that S.87 applied and the debt release should be taxed as income. A Ltd effectively took a tax deduction for the loan by creating a loss on the write-down of its stock as the land value fell.
- Revenue argued that the loan was of a revenue nature as its purpose was to help A Ltd to carry on its trade.
- Revenue argued that the use of the loan was the key to determining its status.
- The TAC noted the nature of A Ltd's trade and that there was no evidence to suggest that A Ltd ever intended to retain the land long-term.
- The TAC noted that there was no evidence that the land was capable of 'providing an enduring benefit to the trade of A Ltd.
- The TAC noted that the land was recorded as trading stock in the Accounts.
- The TAC concluded that the load was incurred for the purposes of A Ltd's trade.
- The TAC noted the original loan term was 15 months and a new loan would have been taken to finance construction of the houses had the development proceeded.
- Instead the loan was extended on numerous occasions over the years.
- The TAC concluded that the loan was both of a temporary and fluctuating nature.

- The TAC noted that A Ltd took a deduction for both the interest paid and the falling stock value and these contributed to the Case I Loss being carried forward.
- The TAC therefore concluded that a deduction was allowed for the debt!
- The TAC therefore agreed with the Revenue.

⇨ Appeal denied – Debt Release was taxable.

⇨ Case is being restated for the High Court.

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104TACD2023 – IT (4 years)

- The Appellant was in a care home and her daughter held power-of-attorney.
- Her 2017 Return was filed in November 2022 showing a refund of almost €20k.
- Revenue refused to issue same as > 4 years etc.
- The Appellant argued her mother had dementia etc. Revenue argued S.865…no choice etc

⇨ Appeal denied – S.865 etc

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105TACD2023 – CT/PREM on payments to Directors

- A Ltd was an Irish 'close company' held by the children of D. D was a director in A Ltd and BP was his business partner.
- In 2019 the Revenue reviewed A Ltd's 2016 and 2017 affairs which escalated into a Revenue Audit in 2020.
- The Revenue were exploring the 2016 payment of €250k to D and €180k into a joint account held by D & BP.
- A Ltd explained that the €250k was to purchase three properties from D and the €180k was to buy a property from D & BP. The properties included 18 acres of land and 7.5 acres of land – the rest was redacted.
- Revenue did not accept the explanations and raised PREM and CT assessments for the payments – PREM being for the BIK on the interest-free loans and the CT being the re-grossing via S.438.
- A Ltd's 2016 accounts listed the payments under 'Other Debtors – Deposits Paid".
- A Ltd's Accountant had written to the Revenue explaining that the delays in proceeding with the purchases were down to various issues including Covid, complications re. rights-of-way and the solicitors being solicitors!
- The Accountant's letter noted that everything was at arms-length and they had formal valuations etc and that A Ltd has acted like the owner at all times.
- The submissions to Revenue included letters from the bank, the solicitors and their tax advisor all of which supported their argument that the payments were deposits etc.

- The three properties were eventually sold to A Ltd in 2020, but not the fourth.
- A Ltd had various witnesses including D, his daughter, the bank manager, the Solicitor and the Accountant.
- A Ltd argued that the Revenue's cases implied a mass conspiracy involving the company, the bank, the solicitors etc and this was simply not the case.
- A Ltd argued that there was effectively an agreement via the various exchanges at the time and referenced various case law to support this.
- The Revenue argued that no contract was in place so the payments were loans.
- The Revenue argued that the various exchanges did not have the necessary components to constitute an agreement or even an oral contract.
- There was a debate about why the company needed the properties and how D needed the cash to settle his own bank loans etc.
- The TAC effectively agreed with A Ltd for the three properties acquired from D and with the Revenue for the €180k paid to D & BP – with the €90k attributable to BP being a deemed distribution.

⇨ Appeal partially Upheld – PREM, CT & DWT were due but only for some of the funds.

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106TACD2023 – VAT via CAB

- This case related VAT assessments raised by CAB for 2015 – 2018 for < €2.2m
- A Ltd was involved in importing items from the UK and declared ICAs for > €15m during the period reviewed by the Revenue.
- The Purchases were zero-rated because they were ICAs. A Ltd also applied zero VAT when the items were later sold in the UK.
- A Ltd argued that the sales were properly liable to 0% VAT as they were exported to UK customers, the invoices included the UK customers' VAT reference and A Ltd retained proof of delivery to the UK customer etc etc.
- A Ltd argued that the Revenue never sought their documentary evidence and raised the assessments based on incomplete information and inaccurate assumptions.
- A Ltd argued that the items were manually delivered to Northern Ireland by the D, the managing director, via car and trailer. Therefore A Ltd did not have shipping documentation as it was not relevant.
- A Ltd argued that they verified the UK VAT registrations and were always paid by their customers via UK bank accounts.
- A Ltd argued that the only documents they could have to prove deliveries are toll-receipts and fuel invoices, but the Revenue can verify that the items are in the UK because they would be registered there.
- Revenue argued Menolly Homes – the Regulations specifically require evidence that the goods are dispatched or transported outside the State.

- Revenue argued that failure to provide that documentation meant the Regulation could not apply and thus the zero-rating for VAT purposes could not apply.
- The TAC spent a long time outlining the history of the case as A Ltd was seeking an adjournment and the TAC felt that they had been given ample opportunity etc.
- The TAC noted that A Ltd did not put forward any witness.
- The TAC noted that the conditions set out in the Regulations were clear and that A Ltd failed to comply with same.

⇨ Appeal denied – Irish VAT properly applied.

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107TACD2023 - SARP

- The Appellant (A) moved from the UK to Ireland in February 2022 to take up an Irish role within his employer's operations.
- The employer submitted the Form SARP 1A in October 2022.
- Revenue refused the application as it was not made within 90 days etc.
- A Ltd requested a review as he felt this time limit was not clearly outlined in the SARP documentation or Revenue's guidance etc.
- The review confirmed that the application was correctly refused as it was outside the 90 days set down in legislation.
- A argued that this was unfair and it was not realistic to expect new arrivals to apply for SARP so quickly as they needed to move etc and also needed Irish PPSN etc.
- The TAC noted the Cambridge Dictionary's definition of certify and concluded it was clear that the employer certifies A's claim via the Form SARP 1A.
- The TAC noted that the SARP 1A was completed in October 2022 and therefore later than May 2022 which is 90 days from his commencement date in February.

⇨ Appeal denied – SARP not available.

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108TACD2023 – CGT - forestry

- The Appellant (H) operated in the forestry sector for most of his career and had accumulated land and trees etc over the years.
- In 2012 H and his wife (W) sold circa 385 acres of forestry lands for €6m.
- Of the 385 acres sold, 368 were under forestry. However the land had planning for wind turbines when sold.
- In 2016 H & W sold 323 acres for €4m. Circa 293 acres were under forestry.

- H & W estimated that circa €4.38m of the €6m received in 2012 related to the trees growing on the land. The Revenue estimated the trees were worth circa €1.472m
- H & W estimated that circa €3.3m of the €4m received in 2016 related to the trees growing on the land. Again the Revenue's value was far lower at circa €1.3m.
- A had four separate valuations from independent experts which he argued supported his figures. The Revenue had their own professional valuer.
- A's witnesses included a forestry expert and another who only valued the land – the latter complemented the former as the land without trees was far lower etc. Likewise with his witness who valued the land from the wind turbine perspective.
- The Revenue's expert argued that their valuation was reconciled with similar comparative sales etc albeit when cross-examined the comparison sale involved only 40 acres.
- A argued that future growth must be included in the valuation of the trees, and it was incorrect to value same only on the basis of what the trees would fetch if sold now etc.
- Revenue argued that the valuation is based on the trees as they stood at that time.
- Revenue also challenges A's experts – some didn't give evidence etc.
- The TAC noted the legislation referenced consideration attributable to the "*disposal of trees growing on the land*".
- The TAC noted that the Revenue only engaged a valuer for the 2016 disposal but not the 2012 one and thus did not have an expert report when it raised the 2012 assessment.
- The TAC also noted that one of the experts was not called as a witness which weakens the impact of their valuation.
- The TAC however was far more impressed by A's experts than the Revenue's expert.

⇨ Appeal upheld – CGT assessments reduced to €Nil.

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109TACD2023 - VAT

- The Appellant (A) ran a small tour business as a sole-trader, and also sold a magazine and advertising in that magazine.
- The appeal involved circa €8k in VAT spread across 2015 – 2017. The debate was about the tour aspect of his business.
- A argued that the Revenue failed to distinguish between the two types of tours that he provided being (i) Educational programmes for schools and colleges and (ii) recreational.
- A provided tours to overseas schools and covered issues like history, literature, art etc.
- A worked with teachers in the 'client schools' to design the tours.
- A's submissions included various letters from his clients extoling the educational benefit of the tours their students enjoyed.
- A represented himself and the sheer length of his submissions reflects this. Ultimately his argument was that his educational tours are exempt via 'young people's education'.

- The Revenue noted that he was selected for review because his VAT and income tax submissions were outstanding.
- When the submissions were made, Revenue had issues with the absence of TAMS for the tours, VAT being claimed on personal costs, the allocation of dual use costs.
- Revenue believe that the tour business is subject to the Travel Agent's Margin Scheme (TAMS) – their VAT assessments reflect this approach.
- Revenue noted that A failed to provide any evidence that his tours formed part of the school curriculum from any of his clients despite numerous requests for same.
- Revenue could not accept any part of the tour business was exempt as the "Education exemption" is only available to certain persons and A is not one of those persons.
- Revenue did not accept his 'in-house talks' were the same as a teacher-student exchange, and noted that lecturing services are liable to 23% VAT.
- The TAC noted Menolly Homes and concluded that A failed to show that he was covered by the 'Educational exemption".

⇨ Appeal denied – VAT was due.

⇨ Case is being restated for the High Court.

==

110TACD2023 - VAT

- This case was redacted in critical places but it involved €2.1m+ in VAT which A (the Appellant) had claimed in refunds in 2018 and 2020 but which the Revenue rejected.
- There were ancillary issues including the Revenue challenging the Appeals against their refusal as (i) the appeal was late and (ii) the original company has ceased to exist etc.
- A also objected to a last-minute 'expert report' being submitted to the TAC as A had not seen same and it was so close to the hearing.
- The case appeared to involve a very technical debate about Investment funds which is 'very niche' so we won't dwell on same.
- A argued that, even though the provision of fund distribution services is exempt, a recovery element did arise for the element linked to funds invested in non-EU assets.
- Later A argued that the distribution services it provided should be subject to VAT.
- The TAC concluded that A's services involved the procurement of investors in units in the funds.
- The TAC concluded that these services were exempt both under EU and Irish law.
- Note A had argued that subsequent changes to the law to ensure that they were no long exempt supported their interpretation of the old law, but the TAC did not agree.

⇨ Appeal denied – VAT cannot be reclaimed.

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111TACD2023 – CGT ER

- The Appellant (A) was a GP and a member or a medical partnership.
- The practice was sold in 2020 and A claimed ER on her share of the sales proceeds.
- A's 2020 Form 11 included an Expression of Doubt (EoD) because of the 3-year ownership test and her complicated admission as a partner.
- The Revenue refused the ER claim and A appealed.
- There was a 2016 document which referred to A joining the partnership in July 2015 – the 'Commencement Date'.
- The 'Vesting Date' was July 2019. The 4 year- period between the Commencement and Vesting Dates was the 'Transition Period'.
- During this transition period, A was indemnified by the other partners for any partnership liabilities and her share of profits was capped at her then salary. She got €1k towards motor costs and 18-days holidays and – from January 2019 – a share of the partnership's GMS pension scheme entitlement.
- From July 2019's Vesting Date, she became jointly and severally liable and got 0.75% share of profits instead of a fixed remuneration.
- A regarded herself as having been admitted to the Partnership from July 2015.
- She argued that she got a share-of-profits from 2015 and the decision to stay on the PAYE regime was simply for administration purposes.
- A argued that the 2020 sale was of the 'Goodwill' and that she acquired her right to that Goodwill in July 2015.
- The Revenue argued that the wording of the documents meant that A was not really a partner until July 2019.
- The Revenue noted that A only received her usual salary during the transition period and she was not exposed via joint and several obligations for this period.
- The Revenue noted that the combined effect of the documents was that A was merely a 'salaried partner' and not a 'full partner' during the transitional period.
- Revenue noted that A received 15% of the sales proceeds on the sale and not the 0.75% she was entitled to via the profit share clauses.
- Revenue noted that Dr. A was not listed in the Form1 Tax Returns submitted by the Partnership in 2015 – 2018.
- Revenue noted that she appeared for the first time in the 2019 Partnership Return.
- Revenue noted that her share of profits for 2019 and 2020 were 8.11% and 14.14%.
- The TAC noted that none of the other Partners gave evidence to support A's case.
- The TAC noted that the absence of other witnesses and documents made it difficult to judge how A's role changed or was perceived but did note the Form 1 submissions.
- The TAC noted that A's 'fixed rate' for the transition period was equal to her existing salary and – critically – underwritten by the Partnership.
- The TAC concluded that A's income was not linked to the Partnership's performance and thus she was only a 'Salaried Partner' during this period.

- This, combined with the Form 1 submissions, led the TAC to conclude that she only became a 'full Partner' in July 2019.
- Therefore she only acquired an interest in the Partnership's assets in 2019.

⇨ Appeal denied – No ER as did not hold the asset for 3 years

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112TACD2023 – IT (4 years)

- The Appellant (A) submitted his 2017 Return in October 2022 claiming a refund of circa €1,949.
- A noted that the delay was because his marriage broke down and then Covid etc
- Revenue argued no choice as …"…shall…" etc

⇨ Appeal denied – S.865 etc

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113TACD2023 - SD

- The Appellant (A) and his father (D) purchased land in 2006 as tenants-in-common.
- D & D mortgaged the property to fund its purchase.
- D gifted ¼ of the land to A in 2008. At that time the land was valued at €6m and there was €4.9m left on the bank loan.
- A valued the land at €261k for SD purposes being (€6m - €4.9m) x 25%.
- A also claimed consanguinity relief so SD @ 4.5% was due, being circa €11k
- The Revenue argued that the SD was €55k being 25% of the remaining loan. Hence €4.9m x 25% @ 4.5% was €55k.
- A argued that the loan was joint & several and remained joint & several etc.
- Revenue argued that A essentially assumed an addition 25% of the debt.
- Both sides agreed the valued and that Consanguinity Relief applied. The debate was whether A assumed an addition ¼ of the mortgage on foot of the transfer.
- Note the Bank's solicitor was a Witness in the case and explained that he participated in the 2008 transfer to ensure that it did not 'diminish or affect' the security or the Joint & Several liability of A or D.
- The TAC noted the witness and documentation and concluded that A did not assume any extra debt so S.41 cannot apply so the Revenue's argument was incorrect.

⇨ Appeal Upheld – SD was as per Appellant's calculations

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114TACD2023 – VAT & IT - Under-declared sales

- The Appellant (A) was a sole-trader and the case involved VAT and IT of circa €266k for 2008-2011 assessed by Revenue in 2017 following an audit of A's affairs.
- The Revenue had visited both of A's places of business in 2013 and kept their receipts.
- The Revenue then conducted an Audit and downloaded A's EPOS records, Sage Accounts etc. Note the Accounts were based on daily Cash Sheets.
- Revenue were not satisfied with the explanations provided re. the differences between Sales as per Sage v as per EPOS and raised income and VAT assessments.
- A argued that the Revenue were 'out of time' while Revenue argued the original Returns were incorrect.
- Revenue's witnesses explained that they sought but never got the 'end-of-day' reports.
- Revenue noted that both of their purchases were recorded via the EPOS so they believed that the EPOS system was correct.
- Revenue explained that A initially explained the differences between the EPOS and Sage Sales was down to Loyalty Scheme sales being incorrectly recorded.
- However one of the examples A provided was one of the Revenue's purchases and the Revenue had not been part of the Loyalty Scheme.
- The Revenue's position was simple – the EPOS accurately showed the sales, the Accounts via Sage did not.
- A explained that the EPOS was used to manage customers and especially their Loyalty Scheme etc, but not to record sales.
- A explained that the Loyalty Scheme provided a 10% discount and this explained the difference between the EPOS and the actual sales.
- A explained how sales are recorded – basically each staff member keeps a daily docket and then there are cash sheets and end-of-day reconciliations before being input in SAGE.
- A noted how their system has controls in place and these had previously led to a Receptionist being terminated for stealing etc.
- A argued that he had provided the Revenue with everything they requested.
- A argued that Revenue did not properly explore the records he kept and incorrectly assumed that the EPOS recorded Sales when it did not.
- A noted that the staff bonuses were linked to their daily dockets and the Staff would quickly note any inconsistencies.
- A noted that Revenue only tested a small period in 2012 and the used this to recalculated past periods without ever auditing the records for those periods.
- A noted that revisiting 2008 and 2009 based on 2012 was unfair and took no account of the economic reality, the fact that it was then a new business, etc etc.
- The TAC noted that A provided no documents evidencing an alternative sales record was being kept separate toe the EPOS even though VAT regulations require that he maintain a record of each transaction etc
- The TAC noted that a didn't do enough to support his case -

"As the burden of proof lies with the Appellant, the Commissioner considers is reasonable to expect that he would provide some form of documentary evidence which tends to establish his sales position within his for the relevant years. Such evidence could take the form of records of individual sales, cash register / till rolls, the paper dockets which the Appellant's staff submitted and used for the calculation of the commission which they were paid or some other form of documentation. No such documentation has been submitted to the Commissioner."

- The TAC noted simply that A did not provide sufficient evidence that he has properly recorded sales etc.

⇨ Appeal denied – VAT & IT are both payable.

⇨ Case is being restated for the High Court.

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115TACD2023 – VAT Registration

- The Appellant (ST) was a sole-trader involve in providing consultancy regarding ISO-9000 qualification etc.
- He tried to register for VAT in December 2021.
- ST submitted details of the contract with his customer to the Revenue.
- Revenue sought various documents including lease agreement for his home which was also his office and a business bank account.
- ST and the Revenue argued about what the Revenue did and did not need.
- Revenue visited ST's location and concluded it was merely a virtual office and there was no evidence of any business being carried out.
- The Revenue refused to register the business for VAT and ST appealed the refusal.
- The TAC noted the supplier invoices and the customer contract and concluded these alone were not sufficient evidence of an economic activity.
- The TAC also noted that ST provided no evidence that he would carry out his activities within Ireland.
- The TAC noted ST held the burden of proof and was afforded the opportunity to provide further documentation but didn't.

⇨ Appeal denied – VAT Registration was correctly denied.

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116TACD2023 – Order of Off-sets

- The Appellant (A) owed tax of €56k for 2008 – but as he had paid €100k preliminary tax, a refund of circa €43k was due.
- The Appellant believed that no tax was owed so wanted the full €100k back.
- A and his brother were in a partnership which built and sold property.
- The Partnership Return for 2008 showed no tax but the Revenue audited same and raised assessments based on the Partnership Accounts.
- The Revenue subsequently settled the audit with his brother and the 2008 revised assessment showing the €56k due reflected that settlement.
- A had fallen out with his brother and had rejected the Partnership Accounts and Return.
- A had not filed a 2008 Return until 2023 – and that ignored everything but his farming activity and thus was 'an incomplete Return'.
- The Revenue noted that very little of A's submissions dealt with the core issues and mainly dealt with his attempts to discredit his brother.
- The Revenue contrasted the Partnership Accounts with VAT filings, Bank lodgements etc and concluded that they were reasonably accurate.
- The Revenue noted that A never provided any evidence that contradicted the profit figure.
- The TAC noted that A was under a 'fundamental misapprehension' as to the role of the TAC and his arguments were not really relevant to the case before it.
- The TAC noted that A made a number of serious allegations against numerous parties, including the Revenue, but these were outside the scope of the TAC.

⇨ Appeal denied – Revenue were correct.

⇨ Case is being restated for the High Court.

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117TACD2023 – IT (4 years)

- The Appellant filed their 2015, 2016 and 2017 Returns in March 2022. There were small refunds for 2016 and 2016 - €171 & €967 respectively - but a small liability for 2017 of circa €43.
- Revenue refused to refund or offset the refunds – over 4 years etc – but the €43 remains due.
- The Appellant noted that the Revenue refused old refunds but still collected old liabilities etc
- Revenue argued no choice – S.865 and S.865B…'shall' etc

⇨ Appeal denied – S.865 & S.865B etc

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118TACD2023 - SARP

- The Appellant (A) moved to Ireland on 5th April 2022.
- A filed the Form SARP 1A on 2nd September 2022 – his employer having signed and certified same on 1st September.

- Revenue refused SARP on the basis that the submission date was > 90 days etc.
- A explained that there were various causes of the delay – he had to return home for an emergency, he had to isolate due to Covid and he was not aware of the deadline.
- Revenue noted that there were no concessionary measures to allow his application.
- The TAC noted that the Employer certified the form in September.
- Incidentally an attempt to argue a later start date would not have worked because he has to have worked for the same employer elsewhere for 6 months prior to arrival etc.

⇨ Appeal denied – SARP did not apply

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119TACD2023 – IT

- The Appellant filed his 2014, 2015 & 2016 Returns on time and showed refunds of circa €6,500 in total.
- The Revenue offset the refunds against taxes due for 2009, 2010 and 2011. These earlier assessment were raised following an Audit in 2013.
- The Appellant filed an appeal against the earlier assessments and the refusal to issue the later refunds. He was adamant that the earlier assessments were incorrect.
- The TAC had refused the appeal application re. 2009 – 2011 as it was so late.
- As the earlier assessments could not be appealed, the taxes were due. Therefore the TAC noted that the Revenue were correct to off-set the later refunds against same.

⇨ Appeal denied – Refund were correct to off-set rather than repay refunds

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120TACD2023 - IT

- The appeal involved > €1.5m dating back to assessments raised in 2012.
- The delay was because another case was making its way via a Circuit Court re-hearing and onto the High Court so this case was parked up pending that case's resolution.
- The Case is heavily redacted but basically related to S.130 and whether altering share rights amounted to a distribution for income tax purposes.
- HoldCo Ltd had ordinary shares, A shares, B shares, C shares and D shares.
- In December 2007 the rights attaching to the 'A' shares were altered so they had exclusive rights to vote and to the assets on a winding-up.
- Later that month HoldCo was effectively put into liquidation. This resulted in €Xm being paid to the 'A' shareholders.
- The Revenue commenced an investigation in 2011 and ultimately the Revenue concluded that the alteration of the share rights amounted to a S.130 distribution.

- The Appellant (A) argued that S.543 applied rather that S.130 and these were al capital transactions and thus CGT rather than IT applied.
- The Revenue argued that there was a transfer of an asset by the company to the members and thus S.130 applied.
- A called their Accountant as a witness - although he explained that he had engaged a tax advisor to write some of his past submissions and refused to answer many questions on the basis that these were matters for that Tax Advisor.
- A large part of the case was about establishing who the shareholders were as there were various trusts involved.
- There was also an argument about New Consideration.
- The redacted elements make it difficult to follow the arguments. However it seems that A argued the value passing from one share to another involves 'new consideration' as there is a loss in value equal to the gain in value.
- The TAC noted that the Tax Advisor was not a witness in the case.
- The TAC noted the absence of documents like CRO Share register, Memo & Arts etc.
- The TAC noted that S.543 was referenced in A's outline of arguments but no submissions were made at the appeal about this argument.

⇨ Appeal denied – Income Tax did apply.

⇨ Case is being restated for the High Court.

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121TACD2023 - EWSS

- Case involved two Appellants but heard together as effectively the same case.
- The Appellant (A) had claimed EWSS and the Revenue were withdrawing same.
- A was relying on the 'other reasonable basis' test rather than the 30% Reduction Test.
- A noted that they had tried to liaise with Revenue but got little feedback.
- A had used the last 6 months of 2020 as their 'base' for their 2021 EWSS test.
- A argued the change in their business meant this was the only reasonable approach to measuring the impact of Covid.
- Revenue argued that they had turnover in 2019 so no basis for using 'other basis' as turnover test was capable of being applied.
- Revenue stressed that A still used a turnover test, but they picked their own comparison periods which is not facilitated in the legislation.
- The TAC noted that the 'other reasonable basis' is contained in Revenue Guidance only and not in the legislation.

⇨ Appeal denied – EWSS must be paid back to Revenue

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122TACD2023 – CT (CGT)

- This case involved €8.9m+ but the redactions make it difficult to read.
- The Appellant was part of a corporate group that specialised in co-ownership property and other investments.
- There was a large gain arising from a property sale and A crystallised a capital loss in the same period to mitigate the gain.
- There appears to have been a series of transactions including inter-company loans, share conversions, alteration of share rights, a relocation to BVI, etc - involved in crystallising the capital loss.
- There appears to have been an internal sale of a 'right to dividends' (RTD).
- Both sides had expert witnesses about the value of the RTDs.
- Revenue did not accept that value assigned to the RTDs.
- Revenue argued the sale of the RTDs was income and not capital.
- Revenue argued that, even if A was correct, the loss would not be allowed anyway due to S.546A – arrangements, tax avoidance etc.
- There were other arguments including whether a significant professional fee was allowable as a 'cost' for CGT.
- The TAC noted the contradictions in A's argument – plan was to retain the property long-term but the fees paid were exclusively for the sale of that property etc.
- The TAC did not agree with A's that the conversion of a loan was 'enhancement expenditure' for the cost of the shares.
- The TAC concluded that the professional fee was not 'wholly and exclusively' for the sale of the property and therefore not an allowable cost of sale for CGT etc.
- The TAC concluded that the sale of the RTDs was income and not capital.
- The TAC did not need to consider the S.546A arguments as he had decided against the Appellant already – there was no enhancement expenditure, there was no capital gain as it was income, the professional fee was not allowable.

⇨ Appeal denied – CT (CGT) was payable

⇨ Case is being restated for the High Court.

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123TACD2023 – VAT & Customs

- This is a niche case about whether or not a classic truck was a 'collector's item'.
- The Revenue concluded that it was not and thus 10% duty and 23% VAT applied on its importation.

- The Appellant (A) argued that it was so it should be 0% duty and 13.5% VAT.
- The Revenue's view was that there had been too many adjustments for the truck to be regarded as a 'collector's item'.
- A argued that the Revenue were incorrect on two key issue – the wheels and the canopy.
- A argued that the wheels fitted were originals and that the Revenue were wrong when they claimed the original had 5 nuts and this had 8 as this model always had 8.
- A noted that temporary wheels were used to allow the truck fit into the container but the original wheels were in the truck and were on the truck when he took possession.
- A noted that the canopy was a temporary measure and that it was attached by cable-ties and designed to allow the transport of spare parts. Again this was removed before he took possession (an agent dealt with the transport, not A).
- A noted that it took him 5 years to find this truck and it was the only one of its kind in Europe. A insisted that the truck was 'an iconic vehicle'.
- The Revenue official who examined the truck gave evidence that (i) he had not seen the cable-ties but did note the canopy and (ii) that the original wheels were not in the Truck.
- Revenue accepted that it was a vintage item and would be of interest to certain people, but that does not make it a 'collector's item'.
- When cross examined, the Revenue conceded that there were two wheels in the truck but insisted that these were not the original wheels. He also concluded that the picture did not actually show a 5-nut wheel as he has originally claimed.
- Revenue noted that they had to examine the truck as presented and could not take into account future changes. Note that A was not present at this inspection.
- The TAC noted that A did not provide proof that the 2 wheels in the truck were the original wheels.
- The TAC noted that the canopy was not an original feature and that, based on the pictures and the Revenue's witness, it seemed sturdy.
- Key issues included that the test is applied at the point of inspection and that A was not present at that point.
- The TAC concluded that the canopy and back wheels meant that the truck was <u>not</u> in its original state at the point of inspection.

⇨ Appeal denied – Classic Truck was not a 'collector's item'.

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1241TACD2023 - VAT

- The Appellant (A) was in the motor trade and specialised in importing high-end second-hand cars from NI and England.
- He had two main suppliers and, during a Revenue review in 2016, Revenue noted that there were subject to different treatments.
- One supplier was subject to the inter-EU regime wherein A self-accounted for VAT etc. This is the correct treatment.

- The other was subject to the margin scheme which Revenue challenged as none of the invoices reference the margin scheme.
- Revenue raised VAT assessments totalling > €268 for 2013 – 2016 (all pre-Brexit).
- A noted that he has dealt with both dealers for years and always found them to b reliable and reputable.
- A noted that there was a Revenue Audit in 2012 and the same processes were in place then and that Revenue had found no issue with same.
- A noted that, based on the Revenue's recent relief, he had been in touch with the supplier and all subsequent invoices reference that the *Margin Scheme Applies.*
- A also confirmed that the supplier confirmed that they always regarded their supplies as being 'margin scheme supplies'.
- A noted that he has always made the Margin Scheme (MS) note in his invoices.
- Revenue noted that the information it received via the HMRC and the Mutual Assistance Request was that they had reviewed sales by the suppler and - apart from 8 - they had been processed as inter-EU. A challenged the admissibility of this document.
- Revenue noted that they had – by concession – allowed the 8 sales identified by the HMRC as being eligible for the MS as qualify for the MS.
- Revenue noted that A did not comply with the MS so it was not an option. The Mutual Assistance Document helped A because of the 8 cars – the Revenue did not need same to exclude the MS as the invoices failed the requirement.
- The TAC dismissed A's complaints about the failure of the Revenue to raise the MS v invoice issue in 2012 as the onus is on him to maintain proper records.
- The TAC allowed the Mutual Assistance document because it was not prejudicial to A but rather it was beneficial.
- The TAC noted that, while A may have acted in good faith, he did not take sufficient care in his exploration of the applicability of the MS.

⇨ Appeal denied – VAT cannot be reclaimed.

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The Revenue Commissioners v Karshan (Midlands) Ltd T/A Domino's Pizza

Irish Supreme Court 2023

Practitioners can – and should – access a copy of the Judgement @ the following or simply click on the link via the below Revenue Commissioners 'update' on the Revenue's site.

https://www.courts.ie/acc/alfresco/e4ee7c3d-0e02-4a33-82b7-6458d895138/2023_IESC_24.pdf/pdf#view=fitH

<u>Excerpt from the Judgement</u>:

"In the light of the foregoing, the question of whether a contract is one of service or for services should, having regard to the well established case law, be resolved by reference to the following five questions:

(i) Does the contract involve the exchange of wage or other remuneration for work?

(ii) If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?

(iii) If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?

(iv) If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.

(v) Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing. "

<u>From the Revenue Website</u>:

Update following judgment delivered in The Revenue Commissioners v. Karshan (Midlands) Ltd. t/a Domino's Pizza

Last Friday, (20/10/2023), the Supreme Court delivered an important judgment on the key factors to be considered when classifying an individual's employment status for income tax purposes.

The detailed judgment was delivered by Mr. Justice Brian Murray in The Revenue Commissioners v. Karshan (Midlands) Ltd. t/a Domino's Pizza. The case was concerned with whether the delivery drivers were independent contractors under a "contract for service" and taxable under Schedule D of the Taxes Consolidation Act 1997, or employees under a "contract of service", and taxable under Schedule E of that Act (PAYE). Revenue welcomes this judgment and the significant clarity it provides on these matters.

Justice Murray decided that the question of whether a contract is one "of service" or "for service" should be resolved by reference to the following five questions:

1. *Does the contract involve the exchange of wage or other remuneration for work?*

2. *If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?*
3. *If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?*
4. *If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.*
5. *Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing.*

In this case, Justice Murray found that the Tax Appeal Commissioner was entitled to conclude that the drivers were employees for the purposes of income tax.

Businesses are responsible for ensuring that the correct taxes are deducted from their employees' pay (which includes both salary payments and any notional pay received) and remitted to Revenue under Schedule E (PAYE), at the right time.

Revenue encourages all businesses, and any agents representing them, to familiarise themselves with the details of this judgment, which is available on the Court Service website. In particular, any business which currently engages contractors, sub-contractors or other workers on a self-employment basis, (i.e. where that worker is not treated as an employee of the business for income tax purposes), should review the nature of any such arrangement(s) in light of this judgment and consider any implications it may have for them. It is important to note that this judgment is relevant to a broad range of work and is not limited to delivery drivers.

Revenue provides a range of opportunities for taxpayers to self-review, self-correct or to make unprompted qualifying disclosures of any matters. Where a business considers that it may have previously misclassified a worker as self-employed, rather than as an employee, and wishes to regularise its position, it should do so as set out in Section 2 of Revenue's Code of Practice for Revenue Compliance Interventions.

[ENDS 27/10/2023]

TOPICAL TAX ISSUES – December 2023

See introduction on page 1. These notes are intended to compliment the slides and the speakers' comments, and all three components should be regarded as a unified package. There is an inherent risk in focusing on any one item outside of this context. In addition, when condensed into this format, complex issues can be crudely over-simplified leading to inaccuracies.

As always, it is important to remember that the reason for inclusion is to prompt further examination and consideration by those who find the issues mentioned to be of relevance. Tax law, and its practical application, is complex and is always evolving – this presentation, the notes and the slides are not designed or intended to cover all aspects of the topics mentioned. The intention is merely to summarise some aspects on the understanding that readers should always revert to legislation and other source documentation and explore matters further – and if relevant take proper advice - before making any decisions. The author welcomes all comments and contributions both during and after the presentation and contact details are included in the slides.

Postpone Accounting (PA)

Postponed Accounting applies to goods that are imported from outside the EU into Ireland.

PA arrangements enable an accountable person to account for VAT on imports on their VAT3 Return so that import VAT may, subject to the usual rules on deductibility, be reclaimed at the same time as it is declared on a VAT3 Return. As a result of this no VAT arises on import instead it is deferred until the Company submits its bi-monthly VAT Return. Assuming there is full deductibility the VAT amount is included in the T1 (sales) and T2 (purchases) box and the net amount is included in the PA1 box of the VAT3 Return.

The RTD has also been amended to include the following boxes:

- PA2 'Acquisitions from the European Union and Non-European Union'
- PA3 'Goods or Services Purchased for Resale (Irish or Intra-EU acquisitions, Postponed Accounting & Non-EU Imports)'
- PA4 'Other Deductible Goods and Services (Irish or Intra-EU acquisitions, Postponed Accounting & Imports)'.

PA does not apply to services. In general services will be accounted for by the business customer. For example, Irish Co receives a consultancy service from UK Co. The supply is outside the scope of UK VAT. Irish Co will self-account for the VAT in its VAT3 and UK Co has no obligation to register for Irish VAT. The net amount of this transaction should **not** be entered into the PA box of the VAT3 or RTD.

There are of course exceptions to any rule, but the author is not going into these for this presentation.

Registering for VAT- Non-Irish businesses

As a result of Brexit, a lot of UK businesses are registering for Irish VAT. The main reason for this is so Irish businesses don't have to deal with customs duty and VAT on import.

There are 2 types of VAT registrations in Ireland and depending on what the business requires will depend on what VAT registration they will pursue:

- Domestic VAT- Only needed if you are selling goods and/or services in Ireland or outside the EU
- Intra-Community VAT- Required if you are selling goods and/or services to the EU.

A non-resident Company will have to register for VAT using the paper Form TR2(FT). This must be submitted to the businesstaxesregistrations@revenue.ie.

Fiscal Representation

Finance Act 2020 gave Revenue the authority to require a non-EU established supplier to appoint a tax representative who will be the person liable for the payment of tax due when that non-EU supplier is making taxable supplies of goods or services in Ireland (S.109A VATCA).

This section also provides that a tax representative appointed under this provision will be held jointly and severally liable for the VAT liability arising from any supply of goods or services made in the State by that taxable person.

This is not automatic and not every non-EU trader has to appoint same. Its only required if Revenue issues Notice to the business requiring same.

Triangulation Relief (S.32(3) VATCA)

As the UK is no longer part of the EU, Triangulation Relief cannot apply when one of the entities is from the UK.

What is Triangulation Relief?

Triangulation Relief is a simplification measure to ease the VAT administrative burden for traders. When a company makes an intra-community supply i.e sells goods to another EU business, VAT arises where:

i) The VAT number was issued

and

ii) Where the transport ends

For example, Irish Co sells goods to French Co. The goods are dispatched from Ireland to France. French Co issues its French VAT number to Irish Co. As a result of this French VAT applies i.e the place where the transport ends **and** where the VAT number was issued. French Co accounts for the VAT on a reverse charge basis under S. 32(2) VATCA. This is a normal Intra-Community Supply.

Section 32(3) VATCA states that the general rule in s32(2) –above – that the place where an intra-Community acquisition occurs shall be the country which issued the VAT registration number of the person making the acquisition shall **not** apply where:

(i)a person quotes his/her Irish VAT registration number for the purposes of the intra-Community acquisition and the goods are actually transported from one Member State to another, neither being Ireland,

(ii)the person makes a subsequent supply of the goods to a person registered for VAT in the Member State where the transport or dispatch of the goods actually ends,

(iii)the person issues an invoice in accordance with what would be required under s66(1) (see Chapter 15) if the goods were supplied in the State, to a person registered for VAT in another Member State and

(iv)containing an explicit reference to the EC simplified triangulation arrangements and

(v)also indicating that the recipient of the supply of the goods is liable to account for the VAT due in that other Member State, and

(vi) in accordance with Regulation 26 of the VAT Regulations 2010 (S.I. 2010/639), the person includes a reference to the supply in his VIES statement (see Chapter 17) as if it were an intra-Community supply, and the fact that it is a supply made under triangulation arrangements should be indicated on the VIES statement by the inclusion of the flag "T" in the appropriate column.

For example, Irish Co buys goods from French Co and has them delivered to German Co. In the absence of triangulation relief there is VAT implications in France (where the VAT number issued) and in Germany (where the transport ends). Due to Triangulation relief, we can ignore the country that issued the VAT number i.e France and VAT will only apply in Germany where the transport ends ie. the supply between Ireland and France is zero rated due to the simplification measures and Germany self-accounts for the VAT.

Due to Brexit transactions like the above can cause issues as Companies can't rely on Triangulation relief when dealing with the UK, which can result in unforeseen VAT consequences i.e having to register for VAT in multiple jurisdictions.

To get around this the UK Company can register for VAT in another EU country.

While registering for VAT in another EU/UK member State (depending on the scenario) appears to be the best solution this does come with its problems

- How do you get an EU/UK VAT Number
- If you do get the necessary, VAT number your now tied to VAT reporting deadlines etc in another country

As with every tax issue each case has to be looked at in their own right to determine what is best solution for the client. It is important to remember that there is no one size that fits all as each client will have different objectives.

Services Connected with Exports

Certain ancillary services connected with exports maybe zero rated if the supplier can prove that the goods have been exported outside the EU e.g retain shipping documentation etc.
Such services include:

- Loading
- Towage
- Landing
- Restowing

VAT Establishment

Section 34(a) VATCA10 states that:

"The place of supply of services to a taxable person acting as such is:
(i)subject to subparagraph (ii), the place where the person's business is established,
(ii)if the services are supplied to a fixed establishment of the person located in a place other than the place where the business is established, the place where the fixed establishment is located, or
(iii)if there is no such place of business or fixed establishment, the place where the permanent address or usual place of residence of the taxable person who receives the services is located."

The concept of establishment or "belonging" in a country is very important from a VAT perspective, as it can determine the place that a supply is made from or deemed to be made from.

Article 10 of the 2011 Implementing Regulations states that the place where the main business of a taxable person is established is the place where the functions of the business' central administration are carried out. In deciding where this is, account should be taken of the place where the registered office of the business is located and the place where management meets. The mere presence of a postal address is not in itself sufficient to constitute the place of establishment of the business.

Article 11 of the 2011 Implementing Regulations addresses the meaning of a "fixed establishment" for the purposes of applying the B2B general place of supply rules (i.e. as per s34(a) VATCA10). In this context, a fixed establishment comprises any establishment, other than the place of establishment of a business referred to in Article 10 of the Implementing Regulations, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

To summarise a fixed establishment is determined by the following:

- The place where the registered office of the business is located and the place where management meets (this though isn't sufficient in its own right and you must also look at the below.
- The place where there is a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

This is important as often UK businesses are registering for Irish VAT in Ireland so as to supply goods to other businesses but their business (i.e establishment) would be located elsewhere e.g the UK. As a result of this services received by the business in Ireland might not necessarily be liable to Irish VAT merely due to having an Irish VAT number.

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Entrepreneur Relief

The current version of Entrepreneur Relief (ER) is contained in S.597AA and was inserted by FA 2015 for disposals on/after 1st January 2016. Initially ER reduced the CGT rate from 33% to 20% but it has been 10% since January 2017.

ER has been problematic from the start due to various factors including ambiguous wording in the legislation, the narrow approach adapted by Revenue, and the relatively paltry guidance provided. While it is easy to complain about the Revenue's approach to ER thus far, the Revenue would argue, with some justification, that they are bound by the legislation.

At one stage it was expected that the current €1m cap would increase to (at lease) €5m, but it now looks like ER might not survive long-term with recent comments about the need to consider the 'job creation aspects' of ER.

In May 2023 the Revenue published some statistics on ER which make interesting reading. As the cliché goes, statistics can be used to argue anything but the following are just some of the interesting points:

- There were more ER claims in 2021 than in any of the previous 5 years. With 1,204 claims, 2021 was also the first year where there was > 1,000 claims.

- 2021 was the first time that the average ER claim exceeded €500k – in all of the previous years since the €1m limit was introduced the average claim was between €400k and €460k.

- In every year, the majority of the claims have been for amounts of €500k or less. In fact, aside from 2021, in most years almost 50% of all claims are for gains of €200,000 or less.

- Unsurprisingly, the vast bulk of the claims relate to company shares. Farmers feature prominently among the claims, far more for example than 'construction' or 'manufacturing' or wholesalers.

- The amount of claims involving the full €1m or more has never exceeded 25% of the total ER claims in any given year.

The low level of 'maximum claims' would appear to verify what many Practitioners encounter in practice, ER benefits small businesses and is not being used – and especially not being abused – as a "tax mitigation tool".

This also indicates that ER might not be inspiring the 'heavy hitters', hence the questions over its impact on job creation. However in the Speaker's experience, the core problem with ER is that there is a lack of trust among the very community it targets – Entrepreneurs.

Whether via revised guidance notes or legislative changes, the fact remains that there are many problems with ER which have been well publicised but which have not been addressed. Many Irish entrepreneurs regard this as showing a lack of commitment to the relief. Keep in mind the disaster that was the first attempt at ER (S.597A) and the substantial difference in value between the Irish and UK versions of the relief.

In addition to the areas of genuine confusion and ambiguity, it is unfortunately also the case that many Practitioners and/or their clients misunderstand ER and sometimes confuse RR concepts as also applying for ER, see for example below 'inter-spouse' transfers.

We will ignore the 'working time' aspect as this has been well covered previously, suffice to say that – if anything – there is more confusion around this now than ever.

One of the well-known problems with ER is its very narrow definition of a '*holding company*'. S.597AA(2) confirms that only shares in a '*holding company of a qualifying group*' can be '*chargeable business assets'*.

S.597AA (1) confirms that a *'holding company*" means "*a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51 per cent subsidiaries*". It goes on to confirm that a "*qualifying group*" means " *a group, the business of each 51 per cent subsidiary (other than a holding company) in which consists wholly or mainly of the carrying on of a qualifying business*".

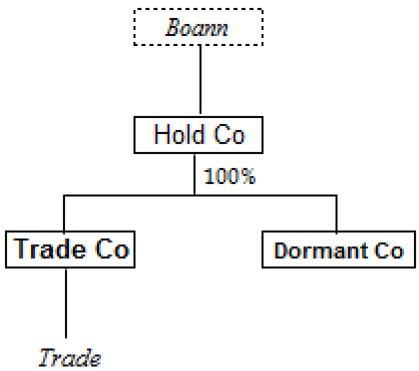
The combined impact of these definitions means that many cases involving individuals owning and operating trading companies do not actually qualify for a relief that was apparently designed for them! See slides for various examples.

Interestingly FB 2023 is inserting a new definition for 'Holding Company' in S.597AA which emphasises that all of the subsidiaries must be 51% subsidiaries but also that the business of the holding company must be wholly or mainly holding shares in those subsidiaries. Apparently the current wording left room to argue that the mere presence of a non-51% subsidiary did not automatically mean that ER was not available.

It is likely that the ambiguity revolved around holding companies with active and/large trading activities within the group. Such a company could argue that its business is still mainly, if not wholly, holding shares in its 51% subsidiaries because those subsidiaries occupy almost all of its resources and generate almost all of its value etc. The new wording is designed to put this requirement beyond doubt. It is unfortunate that the Minister took the time to cement a condition that many felt should have been removed altogether. It is unclear why a trading group should be punished for investing in other companies or why something as blunt as a blanket prohibition is required.

Incidentally it is also important to note that, while some commentators may have a different view, it appears that 'last minute' adjustments won't help non-qualifying groups.

Take the example in the slides wherein Boann has a trading group but it includes a dormant subsidiary:



Boann receives an offer of €1m for her shares in Hold Co but she becomes aware that the presence of a non-trading subsidiary will prevent her from benefiting from ER. Therefore before she sells the group, she first transfers Dormant Co out of the group which is easily done as the shares are worth nothing.

The problem with this proposal is that the legislation requires the group to have been a 'qualifying group' for the previous 3 years so, even after removing the dormant subsidiary, Boann will still not qualify for ER.

The starting point is S.597AA (3) which confirms "*the rate of capital gains tax chargeable on a chargeable gain or chargeable gains accruing in respect of a disposal or disposals of the whole or part of* ***chargeable business assets*** *made by a* ***relevant individual*** *shall be 10%.*"

The definition of a ***relevant individual*** is in subsection (1) and, in the context of Boann's case which involves a shareholder in a Holding Company, refers to an individual "*who has been the beneficial owner of a holding of ordinary shares to which subparagraph (ii) of the definition of '**chargeable business asset'** in subsection (2)(a)applies for a continuous period of not less than 3 years at any time prior to the disposal of those shares.*

The definition of what is and is not a ***chargeable business asset*** *(CBA)* in (2) references shares in "a *holding company of* ***a qualifying group***".

As above, Boann's group was not a ***qualifying group*** until she removed Dormant Co. This means that her shares in Hold Co fell outside the definition of CBA until that transfer and therefore would not be regarded as shares "*to which subparagraph (ii) of the definition …..*" applied.

In a nutshell, how can Boann be regarded as having held qualifying shares for 3 years when they have only been qualifying shares for a few weeks?

In order to claim ER Boann would have to be able to claim that she was a ***relevant individual*** but it is difficult to reconcile the facts of her case with the technical requirement that she "*has been the beneficial owner of a holding of ordinary shares to which subparagraph (ii) of the definition of 'chargeable business asset' in subsection (2)(a) applies for a continuous period of not less than 3 years at any time prior to the disposal of those shares* ".

Boann also has another potential problem with (2)(a)(B) which requires Boann to be a '***qualifying person***' – as a full-time working Director she has no issue with that aspect. However there is an argument that, because this is a Holding Company case, the fact that the ***qualifying group*** did not exist may present a problem.

In simple terms, the definition of a ***qualifying person*** refers to "*an individual who is or has been a director or employee of a company (or companies in a qualifying group)*. It then goes on to link her service for 3 years to '*those companies*".

Therefore an argument could be made that any period of service pre the removal of Dormant Co does not qualify as Boann was not working for 'one of those companies' – i.e. she was not working for a company in a '***Qualifying Group'***.

As per the slides, a group holding shares in a non-trading subsidiary is only one of many examples where a trading group might not qualify. In all cases it would be difficult to argue that ER has a 'point in time' test that would facilitate last-minute tidy-ups.

Another example of a last-minute tidy up that does not work is the transfer of shares to a spouse just before a sale. There is nothing in S.597AA that accommodates the carry-over of one spouse's history to the other and the Revenue are on record in TDM 19-06-02b that "Periods of ownership by spouses cannot be aggregated for the purpose of the 3-year continuous ownership condition". S.1028 imposes a 'no gain / no loss' situation on inter-spouse transfers which has the effect of allowing one spouse to 'step into the shoes' of the other but which is not sufficient to generate a claim for ER.

The absence of a 'real world' approach to liquidations remains a problem for ER. As per their TDM, the Revenue have confirmed that ER "can apply on the liquidation of a company, <u>provided the company was carrying on a qualifying business up to the time the liquidator was appointed</u>, and the liquidation was completed within a reasonable period of time. For this purpose, Revenue will regard a period of 2 years as being reasonable".

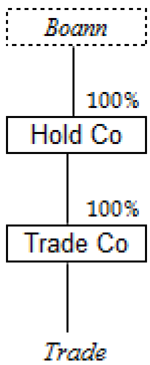
In practice it is beneficial for all sides if the company is allowed to be wound down prior to the appointment of a liquidator and this has long been recognised in RR cases. This issue has been raised via TALC and the Revenue have been unwilling to move, suggesting that the matter be referred to the Minister and dealt with via legislation even though all Practitioners were seeking was that they extend the RR practice to ER.

Practitioners have also questioned the basis of the Revenue's position as it is not in the legislation and that there is sufficient 'greyness' to allow the matter be dealt with via guidance. However Revenue insist that the combination of references to 'qualifying business' justifies their interpretation.

Therefore Practitioners need to be cognisant of the fact that the Revenue still insist that ER will not be available unless the company is actively trading when the liquidator is appointed.

Another problem with ER is that it does not facilitate the liquidation of Holding Companies. As the Revenue will only accept that ER applies to liquidations involving companies that were 'carrying on a qualifying business', Parent/Subsidiary structures – which are very common – struggle to benefit from ER.

Again take Boann as the example and assume she has long since cleaned up her group so there is no problem re. dormant subsidiaries etc.



In practice Boann will try to sell Trade Co and then liquidate the money out of Hold Co. If she succeeds then she faces at least 33% (assuming S.626B shelters the first sale) on accessing the sales proceeds. If she held Trade Co directly then she would benefit from ER.

It is not clear why ER is not available to entrepreneurs like Boann or why no attempt has been made to address this 'anomaly'. Interestingly the Revenue's TDM confirms that Double Hold Cos can benefit from ER but in reality to do so the shareholder has to sell the entire group and this is rarely what happens in practice.

In cases like this, a reorganisation might be implemented to relocate Trade Co to a new 'clean' Parent Company but the buyer must still be comfortable with this.

The so-called anti-avoidance measure which dis-applies ER where the sale is to connected parties has been well-covered previously and remains a problem for many Irish businesses where the sale is often to a 'connected party' such as children.

597AA(2)(b)(iv) ensures that the sale of goodwill to a connected company does not benefit from ER – so most sole-trader incorporations would be caught by this exclusion.

S.597AA(2)(b)(v) excludes the sale of shares to connected companies. Of course both exclusions applying subject to (8) which dis-applies the exclusions in bona fide cases:

"S*ubsections (2)(b)(iv), (2)(b)(v) and (6) shall not apply in relation to a disposal of assets where it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme the main purpose or one of the main purposes of which is the avoidance of liability to tax*."

The key thing to note is that in both cases the claim is initially excluded from ER, it has to allowed back in. This differs from traditional 'anti-avoidance' provisions where the claim is initially accepted unless the Revenue reject it.

From the beginning these changes were greeted with scepticism by entrepreneurs and Practitioners alike and are part of the reason that there is a lack of trust in ER.

Incidentally Practitioners need to be wary that the exclusion is S.597AA(2)(b)(v) does not just apply to the sale of shares to a company connected with the vendor. The actual legislation excludes from the definition of "chargeable business assets "*subject to subsection (8), shares or securities in a company which are disposed of directly or indirectly to another company, where, immediately following the disposal, the individual is connected with the first-mentioned company*"

This could also capture the situation where the shareholder does not sell all of their shares. For example:

- Sadhbh owns all 100 shares in Tech Ltd

- Thirdparty Co buys 40 shares from her for €1m

⇨ Despite not being connected with the purchaser, Sadhbh still falls foul of S.597AA(2)(b)(v) as she remains 'connected with' Tech Ltd after the sale.

Sadhbh can still rely upon the 'bona fide' clause in (8) but it is unhelpful that there should be any ambiguity about her position.

Finally another RR concept that Practitioners frequently assume can also apply to ER cases is where assets are held outside of the company – e.g. the directors own the business premises personally and are selling same at the same time as the shares. ER is not available to the sale of the business premises.

At the time of writing there was not sufficient detail to properly explore the proposed new ER for 'Angle Investors'. The new relief will target 'innovative start-up' companies and may reduce the CGT rate for investors to circa 16% albeit there is a proposed cap at twice the amount invested. Based on the Budget 2024 documents, it appears that the relief will involve a minimum of €10k invested, a 3-year retention period, and a shareholding of between 5% and 49%. There will be a life-time limit of €3m.

While all new reliefs are welcome, this already has the familiar feeling of all form and little substance.

Retirement Relief

The vast majority of Practitioners will be familiar with Retirement Relief (RR) in both of its forms – S.598 and S.599. Nevertheless there are still some nuances that merit attention as well as persistent problems many of which are due to tenacious misconceptions.

Many of these issues have been covered in the past, including by this Speaker at previous Omnipro events, so there is no need to dwell on this topic. However the planned changes announced in the recent Finance Bill put some of these issues into a different context. What follows is a whirlwind tour of some of the issues that frequently surface for Irish Practitioners and their clients, as well as some of the nuances which may be of interest.

- S.598 Thresholds

  The €750,000 and €500,000 limits imposed on RR are 'absolute thresholds' rather than 'excess thresholds'. In other words, it is not just 'the excess' over the threshold that becomes liable to CGT - if the threshold is exceeded then there is no RR - apart from marginal relief cases - and any and all of the gains previously sheltered by RR become taxable even if there are years between the events.

  Example:

  - Fergal is a 60-year-old farmer who has owned and farmed his land for > 30 years and will continue to farm it for the foreseeable future.

  - In 2020 Fergal (then aged 57) was approached by a neighbour who wanted to purchase a small field from Fergal as the neighbour had ambitions to carve same up into sites for his children. Fergal sold that field for €600k and paid no CGT due to S.598.

  - In 2021 Fergal sold another small portion of land for €150k and again no CGT arose because Fergal qualified for RR under S.598.

  - In 2023 Fergal intends to sell another portion of land for €200k. He believes that he will have to pay some CGT on the sale of this land because he has already used up his €750k limit as per S.598.

    It is important that Fergal understands that the sale of this land in 2023 will not only generate a taxable gain for that sale, it can retrospectively trigger CGT on the 2020 and 2021 disposals as well.

S.598(3) provided for the aggregation of all qualifying disposals so – in crude terms - the 2023 sale would put Fergal's "RR proceeds" @ €950k – being the aggregated total of the three disposals – and thus he has exceeded the permitted total of €750,000, hence no RR for any of the disposals.

It is surprising how often this misunderstanding of the 'lifetime thresholds' imposed by S.598 surfaces in practice. It may be possible for Fergal to avoid triggering a clawback if he can take steps to ensure that the sale of the 2023 land will not qualify for RR, for example he could stop farming that land prior to the sale so it is no longer a 'qualifying asset'. The problem is that Fergal has to know the problem exists before he takes the time to explore his options.

Practitioners should ensure that they emphasise the 'claw back risk' when their client benefits from RR via S.598, and the importance of seeking advice BEFORE agreeing to any further sale.

A related myth that still surfaces is that Fergal can avoid the claw back by simply not claiming RR on the 2023 disposal. Remember that S.598(2) makes it clear that *"...relief shall be given…"* etc. RR is automatic – it does not need to be claimed.

Practitioners will recall from October's Budget that the reduced €500,000 threshold which currently applies from age 66 will be push back to age 70 from 2025 onwards.

It is interesting to note that FB 2023 is inserting a new paragraph into S.598 which confirms that "*A claim for relief under this section shall be made by the individual making the claim in the return required to be delivered by that individual under Chapter 3 of Part 41A for the relevant year of assessment*."

While some commentators believe that this now means that RR must be claimed – in which case 'Fergal the Farmer' above might have a 'get-out-of-jail-free' card – it seems more likely that this merely means that the RR 'claim' must be disclosed. The basis for this is that there is no change to the "*...relief shall be given…*" language and indeed this phrase is replicated in the new provisions contained in FB2023 for the above mentioned changes from 2025 onwards.

- S.599 Threshold

S.599 currently imposed a cap of €3m on the total RR an individual can claim under that section. It is important to note that this is a 'per claimant' cap and not a 'per child' cap. If your client owns shares in a family company worth €6m and has two children – they cannot avail of €3m for each child.

As with the S.598 above, all ‘S.599 disposals’ are aggregated so a gift of €2m in 2022 might be fine but a subsequent gift of €3m in 2023 is not because the ‘RR proceeds’ are now €5m and thus more that the €3m permitted.
However, unlike the S.598 limits, the €3m cap is S.599 is not an absolute ‘threshold’ so there is no claw back of past claims.

See slides for example from past presentations about how to calculate the tax when €3m cap is exceeded.

Practitioners may be aware that FB 2023 is introducing a new S.599(1)(b)(iv) which will change the S.599 regime from 1st January 2025 onwards by (i) delaying the imposition of the €3m cap so it will apply from age 70 rather than age 66 and (ii) imposing a new €10m cap on all S.599 claims.

The €10m cap will be similar to the €3m cap – all disposals are aggregated, if exceeded then the relief is based on the gain that would have been if proceeds were €10m etc.

Note also that FB2023 will extend the anti-avoidance clause wherein S.598 and S.599 claims can be aggregated from 2025 onwards so that it will apply to all disposals from age 55.

Incidentally, it is generally accepted (but not certain – see Summer 2022 presentation) that the current regime ignores disposals made before the age of 66 when considering if the €3m cap is relevant. The proposed changes from 2025 onwards would appear to aggregate all RR claims regardless of the age.

See S.598 comments above about the need to ‘claim’ RR going forward as the same applies for S.599

At the time of writing the Finance Bill was still in draft form so Practitioners should revisit these changes in the New Year when the final legislation is available and also, hopefully, some guidance will be available.

Incidentally there have been discussions via TALC about cases where the property is held outside of the company but it is leased to the company. Practitioners will know that the definition of *Qualifying Assets* in S.598 includes property owned by the individual but was used for the purposes of a the *family company* provided that it was sold to the same person and at the same time as the shares in the company.

There appears to be some concern about whether or not RR will apply where rent is charged to the company for using the property. The basis of this concern is unclear – possibly there is a concern that the Revenue can argue that the property was ‘used to generate rent’ rather than used for the purposes of the relevant company.

The fact that this was not simply dismissed as an issue is a concern. It is unclear what criteria the Revenue will be using as they 'examine each case on its merits'.

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting Thursday 22nd June 2023

Item 5: CGT Retirement Relief:

Practitioners queried if an individual will be precluded from claiming CGT Retirement Relief in circumstances where the individual personally owns a property that is used for the purposes of the trade carried on by a company that the individual is a shareholder in, and the individual receives rent from that company. In such circumstances, practitioners asked does this arrangement preclude the property owner from claiming CGT Retirement Relief where the property is disposed of.

Revenue queried if the fact that the individual is receiving rent from the property and thus whether the property is a 'qualifying asset' for the purposes of section 598(1)(a) TCA 1997 is what is giving rise to query. If this is the case, Revenue advised that the facts and circumstances of each case will have to be examined to determine if the property would be considered tom be a 'qualifying asset' for the purposes of the relief. Revenue advised that if the query is in respect of a 'live' case that the Revenue Technical Service (RTS) may be used to query the application of Retirement Relief in such circumstances.

Agricultural Relief

Agricultural Relief (AR) has played a significant role in farm succession planning for generations, but it is a deceptively complicated relief and in recent years there have been changes in legislation and interpretation which has narrowed the scope of the relief.

As experienced Practitioners will know, some of the effects of legislative changes have been mitigated by Revenue Guidance – for example 20 hour per week being enough to be an 'active farmer' – but it is far from ideal that Irish farmers have to rely upon concessions when trying to navigate something as complex as passing on the family farm.

There are some persistent areas that arise in practice which are dealt with in the slides.

One issue that continues to generate confusion and debate is the treatment of farm houses. The legislation is relatively short – S.89 CATCAs confirms that Agricultural Property means "*agricultural land, pasture and woodland situate in a Member State or in the United Kingdom and crops, trees and underwood growing on such land <u>and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the</u>*

property, and farm machinery, livestock and bloodstock on such property… " (emphasis added).

Despite of – and maybe because of – its relative brevity, this legislation has continued to cause confusion and disagreement over the years, and in turn problems for Practitioners and their clients. For now we will focus on two aspects – what is a Farm House and what if it is isolated from 'the farm'.

The legislation simply references *'…farm houses and mansion houses…as are of a character appropriate to the property*'. Ignoring the 'mansion house' aspect , this effectively creates two tests for a house to be regarded as 'agricultural property' in that (i) it must be a 'farm house' and (ii) it must of of a 'character appropriate to the property'. The problem of course is no one is quite sure what either of these phrases actually means.

It is arguable that these are not two tests at all and must be considered together – it can't be a farm house if it not of a character appropriate to the property, and it must be a farm house if it is of a character appropriate to the property!

In their TDM on AR, the Revenue reference "Farm buildings and dwelling houses (and the land on which they are situated) that are proportionate in size and character to the requirements of the farming activities". Note that the Revenue link the house to the farming activities,

There is very little Case Law in Ireland around this issue but, if they have not already done so, Practitioners should read the 2022 Appeal case 40TACD2022 which is freely available on-line. Among many other interesting things explored in that case, some of which we will revisit below, there was a heated debate about what did and did not constitute a 'farm house'. Out of necessity, both sides had to draw heavily on UK case law.

The TAC itself referenced the UK case of Chanley v HMRC. That case referenced various criteria including for example:

- Is the house appropriate re. it's size, content and lay-out in the context of the other farm buildings and the size of the farmland being farmed.

- Is the house proportionate in size and nature to the requirements of the farming activities.

- The history of the house and its role in agricultural production.

The Judge noted that one cannot describe a farm house but 'one knows one when one sees one' and re-worked the 'man on the bus' test to reference if "the educated rural layman would regard the property as a house with land or a farm".

Ultimately the importance of this Appeal case is the consideration of a 'functional' test when considering if a house is a 'farm house'. The TAC noted that there was a space in the house for storing wellington boots and workwear and even farm equipment. The house contained tools and animal medicine. This raises the question as to whether a house on the land could be regarded as a 'farm house' if it is not in use for the purposes of farming and/or occupied by the farmer?

This would certainly be a departure from the approach taken to date, but it is not difficult to see how the Revenue may use the TAC's comments in this case to make such an argument.

In that Appeal, the TAC concluded that it was indeed a 'farm house' but that it was not actually 'agricultural property' – the reason being that the house was detached from the land.

There was a lot of reference to Rosser v IRC which defined a farm house and in all three cases referenced specifically mentioned that the house was 'attached to the farm'. Of course this is also a UK case and not binding in Ireland but both the Revenue and the TAC quoted from same.

The Revenue have long argued that the farm house cannot be regarded as agricultural property if it is not subject to the same transaction as the farm land itself. Some have argued that this case validates the Revenue's position. However this case only dealt with physical separation, not ownership separation.

It is true that the Revenue have long argued that the farm house can be regarded as agricultural property if it is physically separated from the farm, and therefore the above case would appear to agree with this position.

However the 'separate transaction' argument is different. The house may still be physically attached to the land, but the Revenue do not regard is as being 'agricultural property' because it has been separated from the land by only one of the components being included in a transfer.

In their guidance notes the Revenue specifically deal with the separation of the land from the buildings (emphasis added):

"*It is agricultural land that determines whether the relief applies. <u>A building, without the land, is not agricultural property.</u> Therefore, a farmhouse transferred to a farmer on its own does not qualify for agricultural relief. On the other hand, if the farmland is then subsequently transferred to the same beneficiary, thereby 're-joining' the house and land, the farmhouse is treated as agricultural property in relation to any subsequent gift or inheritance taken by that beneficiary. If the land is gifted to the beneficiary and the donor separately retains the house, the house will not be 'agricultural property' on its own assuming it is later gifted or devised to the same beneficiary and although it may re-join the agricultural* *property and become, again, agricultural, it was not agricultural property at the date of the gift/inheritance*."

It is not clear that the above appeal case did anything to validate the Revenue's position as above. That said, the legislation itself does lend weight to the Revenue's approach.

It is not uncommon in farm succession cases for the parent to retain their house and simply transfer the land to the child initially, letting the house pass later via the Estate. Sometimes the Parents also retain circa 5+ acres with the house so that the child can later claim AR when they do inherit the house. It will be interesting to see if the above 'functional test' will surface in such cases going forward.

Incidentally one particular anomaly in AR that the Speaker raised previously continues to cause problems for the unwary and this merits further attention – what happens if the land is partly farmed and partly leased.

S.89's definition of a 'Farmer' includes the traditional '80% test' and – since 2015 – the 'Active Farmer' test. There are three ways to be an 'active farmer' – (i) be a qualified farmer who farms the land, or (ii) farm the land on a full-timer basis (50+% of working time etc) or (iii) lease the land for 6+ years to someone who fits into (i) or (ii).

Although not explicitly mentioned in their guidance notes, Practitioners should be aware that the Revenue's position is that the client must either farm the land or rent the land to fall within the S.89 definition – the client cannot do both <u>at the same time</u>.

The Revenue may accept the situation where the client converts from one to the other – e.g. they initially farm the land and then decide to lease same. While no longer available on the Revenue's website, the following is an excerpt from the TALC Capital Taxes sub-committee meeting in September 2017:

Item 7: Capital Acquisitions Tax - Agricultural relief concession

- Practitioners queried whether Revenue would allow Section 89 CATCA agricultural relief to apply in circumstances where a beneficiary farms part of their land and leases the remainder of the land at the same time, subject to all of the other criteria being met.

- Revenue stated that the relief cannot apply in these circumstances as the legislation is clear that it can only apply in either the case of the land being farmed or leased but not both at the same time.

To give an extreme example –

- Alannah owns and – with the help of her son Fiachra, farms circa 150 acres of farmland.
- In 2022 she lets 10 acres to a neighbouring farmer under a 6-year lease.
- In 2023 Alannah transfers the entire farm to Fiachra.
- Fiachra continues to farm the 140 acres and rent the 10 acres.

⇨ Fiachra cannot qualify for AR because he is both farming and leasing the land!?!?!

This raises questions about what the situation might be if some of the land is not used for either – for example if Alannah/Fiachra were letting the local Rugby club use 0.5 acres for training?

The legislation makes it clear that, to qualify as an 'active farmer', the individual must either be farming or leasing the land received via the gift or inheritance (emphasis added):

- "*….farming agricultural property (including the agricultural property comprised in the gift or inheritance) on a commercial basis and with a view to the realisation of profits from that agricultural property*", **or**

- "*….leases the whole or substantially the whole of the agricultural property, comprised in the gift or inheritance for a period of not less than 6 years commencing on the valuation date of the gift or inheritance, to an individual who satisfies the conditions in paragraph (i) or (ii)*"

This would imply that there is scope for incidental use if the claimant is letting the land but not if he is farming same.

For example if Fiachra leases 149.5 acres to a qualifying farmer and lets the Rugby Club use the remaining 0.5 acres then he is still leasing 'substantially the whole' of the farm, but if he farms the 149.5 acres himself then he fails the test.

It is interesting that, despite this issue being raised via TALC as far back as 2017, the Revenue do not reference same in their guidance. Given their position, it would be expected that their guidance would emphasise the importance of avoiding dual use etc.

Before we leave this matter, Practitioners should note that FB 2023 is making a few house-keeping changes to AR – for example the 6-year clawback period will now commence from the Valuation Date rather than the date of the gift or inheritance.

Business Relief

Business Relief (BR) reduces the taxable value of the gift/inheritance passing by 90% and therefore it is critically important in planning succession for family businesses. This relief is spread across multiple sections in the CATAs (S.90 – S.102) and Practitioners are well aware that it is a complicated relief. This presentation will focus on two aspects only.

The first topic is relatively nuanced but may be of interest to Practitioners because it might solve a problem where Agricultural Relief is not available.

A Circuit Court case, *Revenue Commissioners v Collins* (sometimes called *Collins v Maher (Inspector of Taxes)*), on 27 May 2008 held that lands let out for grazing on conacre for 9 months each year did constitute a business and that the business did not fall within the exclusion of "making and holding investments" in CATCA 2003 s93. The key to the decision was evidence of supervision and management by the landowner which was sufficient evidence that a business was being carried on.

There is surprisingly very little reference to this nugget in tax literature. It is mentioned almost in passing in the Revenue's TDM – "*As a consequence of a court decision the letting of land on conacre is also considered a business activity and not "investment (A Circuit Court decision from May 2008 found that the letting of lands for grazing on conacre was a business and that the business did not fall within the exclusion of "making or holding investments" in section 93(3))".*

As noted above, the actions of the farmer in this case were important in both the Appeal Commissioner and the Circuit Court concluding that it was a 'business' – he inspected the land daily, managed it when not being let, monitored for disease, kept weeds under control etc. The core concept is that the landowner plays an active rather than passive role.

Remember, land let via conacre would cause problems for both RR and AR. Formal leasing of land can bring tax-free rental income and keep both of these important reliefs on the table. However if the farmer is relatively elderly and intends to bequeath the farm so someone who'd struggle to meet the 80% Farmer Test, short-term grazing or conacre arrangements might be worth exploring further.

The second topic worthy of note when talking about BR is that there was another Appeal Case in 2022 wherein the Revenue challenged a BR claim on shares in a family company because of the large amount of Cash held by the company.

The case reference is 85TACD2023 and is well covered by the Speaker in the Topical Tax Cases presentation elsewhere. Basically the Revenue sought to restrict the BR to take account of the 'surplus cash' which the Revenue estimated to be circa 75% of the cash held by the company. The Revenue argued this cash was not Relevant Business Property.

The Appellant in this case argued that the cash was not held via investment-type vehicles but kept available at all times, and outlined the numerous reasons that the cash may be required by / for the business.

The key to these cases is not so much arguing that the cash is RPB so much as arguing that the cash is not excluded on foot of being '*the making or holding of investments*'. This is what the TAC concluded and upheld the appeal.

This case follows in the footsteps of the 2021 case – 132TACD2021 – which we now know involved the Nolan's Supermarket in Clontarf. In that case the Revenue again failed to restrict the BR claim for 'surplus cash' and again the tax-payer relied on arguments about how the cash was not held for investment purposes but rather to fund business running ad expansion costs etc.

Practitioners need to be wary of believing that these cases have changed things too much – if the cash was held via long-term savings or other 'investment type' accounts, or if the client was not able to outline the business use of the cash, then a different decision may have been reached.

In short – there are many lessons to be learned from these cases but Practitioners should refrain from taking comfort in the fact that the Revenue keep losing these cases, and instead be aware that the Revenue keep taking these cases.

Employee Expenses / ERR

By now most if not all Practitioners will be aware of the 'Enhanced Reporting Requirements' that are coming into effect from 1st January 2024. If they haven't already done so, Practitioners should explore the Revenue's website for details including a recording of a Revenue webinar on the matter. The relevant legislation is contained in S.897C.

It is important to note that employers must capture details of vouched expenses as well – the ERR is not just for flat-rate schemes. The information that employers must capture and submit includes:

- Remote Working Allowance
  - Total number of days, amounts paid, date paid

- Small Benefit Exemption
  - Details of the date paid, the value of the benefit

- Travel & Subsistence
  - Date paid and amount paid and the category – i.e.
    - Vouched Travel (i.e. based on a receipt)
    - Unvouched Travel (Civil Service Scheme, Hauliers Scheme etc)
    - Vouched subsistence (i.e. based on a receipt)
    - Unvoiced subsistence (Civil Service Scheme etc)
    - Site-based payments (Country Money etc)

- Emergency Travel
- Eating-on-Site

To date the assumption among many Practitioners – and their clients – is that the ERR details will be rolled into existing payroll systems. **This is a dangerous assumption to make**. The new ERR system is specifically independent of payroll – for example a separate ERN must be uploaded to allow the person – be it the employer or agent – to make the ERR submissions. Some payroll providers are working with Revenue, but many have decided to stay clear of the ERR or to deal with same via a separate service contract.

Employers should liaise with their payroll providers <u>as soon as possible</u> to ensure that they are ready for the new ERR from January 2024. If the payroll system is not going to facilitate ERR, the Employer may have to manually input details via ROS which could create a substantial workload for the unprepared.

It is important to note that this is 'Phase 1' only – the Revenue hope that ERR is extended for other payments/benefits in due course.

This is an interesting development for all sorts of reasons. Practitioners have been waiting for legislation around Employee Expenses for years but this was not the legislation many expected. As one weary Practitioner put it, it is frustrating that there appears to be a move to ensure that thing are being done properly before clarifying how we do things properly!

Practitioners may recall that there was widespread confusion surrounding Employee Expenses following the Revenue's focus on the contracting sector where core issues – such as the concept of '*normal place of work'* – suddenly because very confusing. There was confusion as to whether or not a review process was taking place which ultimately ended in the conclusion that this was a "*legislative matter*".

It seemed that everyone agreed that the existing regimes were no longer 'fit-for-purpose', but no one could agree on how to resolve same so the matter was thrown onto the lap of the Minister for Finance. The issue was raised in the pre-Budget submissions in 2015 and apparently the Minister for Finance promised that a consultation would take place later that year. It is unclear if this ever happened.

The issue was raised again via TALC in March 2017 – the following is an excerpt from the TALC meeting minutes:

Practitioners noted that the delay in publishing the results of the consultations in relation to travel and subsistence is causing issues. It is not clear what qualifies for tax relief and what does not. ***This is a very serious issue affecting all sectors. Revenue advised that concerns in relation to the matter are best directed to the Department of Finance***.

Interestingly a certain Michael McGrath suggested a Committee Stage Amendment to the 2017 Finance Bill committing the then Minister for Finance to prepare a report into the travel and subsistence regime for Irish contractors!

Some Practitioners may recall that the Speaker confidently predicted over a decade ago that there would be no 'solution to this quagmire, and thus far this has proven to be the case.

The underlying problem here is that all of the expense regimes are 'concessionary' by nature. <u>There is no legislative basis for any tax-free reimbursement of expenses even if they are 100% wholly and exclusively and necessarily incurred etc.</u>

S.117 TCAs makes it clear that – if not already taxable via S.112 - any payment to an employee is liable to tax and regarded as an emolument. S.117 ensures that it is '*assessable to income tax*' and S.985 etc ensures that PAYE should be applied.

It is true that S.114 provides that any payment for an expense incurred 'wholly, exclusively and necessarily in the performance of [their] duties' is not taxable, but this provides for a reduction in the employee's emoluments. In other words, S.114 permits the employee to make a claim via the Revenue, not for the employer to ignore their PAYE obligations!

In other words, the legislation permits employees to claim a deduction for 'legitimate expenses' but S.117 ensures that there is no scope for this relief to be provided 'at source'.

Therefore not only does Irish tax legislation not accommodate the reimbursement of legitimate expenses, it actively prevents it. Despite this, there are currently three different 'Employee Expense Schemes' in operation – being (i) The Civil Service Scheme, (ii) The Country Money Scheme and (iii) The Hauliers' Scheme. If the legislation prevents the tax-free payment of expenses, why are there three different schemes that permit same?

There are many possible answers to this but generally they can be crudely condensed into (a) they make life easier for employees, (b) they make life easier for employers, and/or (c) they make life easier for Revenue. Practitioners will note the confusion that has been allowed to fester for over a decade which casts doubt over any concerns about making life easier for employers, employees or their advisors.

The reality is that these schemes came into existence when everything was paper-based, and as technology improves then the need to 'manage the administration burden' might make these schemes redundant. From this perspective, it is entirely possible that ERR is the first step in replacing all 'flat-rate schemes' with 'real-time regimes'.

In the meantime, Practitioners and their clients have to work with the scheme that they have.

Notwithstanding the legislation, the Revenue's website makes it clear that certain expense payments can be made in certain circumstances, although we know from Appeal cases that the Revenue can easily fall back on S.117 when it suits and dismiss the relevance of their guidance which cannot be relied upon in Appeal cases.

That said, the vast majority of problems that arise in practice stem from failure to adhere to the Revenue's guidance on employee expenses. In advance of the ERR coming into place, Practitioners should remind clients of the importance of adhering to guidance and of engaging with Revenue in areas of doubt. Employers should do their own internal review and possibly carry out some 'house-keeping' to ensure that their internal systems are 'fit-for-purpose'.

This topic merits a day-long CPD session so the following should be seen as little more than an appetiser. The various schemes are all available on the Revenue's web-site along with plenty of guidance around employee expenses, flat-rate v vouched regimes etc etc.

- In theory all three scheme are available to all employers. For example anyone with site-based employees can utilise the Country Money Scheme, builders and Road Hauliers can use the Civil Service Scheme instead of Country Money or the Road Hauliers Schemes if they prefer, etc etc. Employers should avoid using multiple schemes at the same time.

- The Road Hauliers Scheme requires the employer to keep sufficient records to link the journey to the driver and the customer. Invoices and/or delivery dockets must be retained to show the journey was linked to a specific job. Tachographs must also be retained. Note the employer must retain 'sufficient records' even if only paying Civil Service rates and not the Road Haulier Scheme rates.

- The Country Money Scheme involves a 'one-size-fits-all' payment. Employees can't be paid the Country Money rate and also be reimbursed for mileage via the Civil Service Scheme for example.

- The Country Money Scheme is not available for employees engaged for one site only. This is a persistent problem area in Revenue Audits. Another is the payment of the €5 per day 'eating on site' allowance even when there are adequate canteen facilities provided on the site. This surfaces often in 'site-visit' cases.

- Revenue expect all expense regimes to incorporate validation systems – e.g. the employee might sign his/her claim and the employer should authorise/approve same. While many schemes are automated and thus there is no 'paper-trail', the Revenue will still want reassurance that employee claims are not simply processed en masse and that some sort of review process is in place, even if only to prevent errors.

- It is always an option for employers to adapt a policy of not reimbursing expenses and let the employees claim via S.114 directly from the Revenue. The Speaker has seen this happen with employees with car-based roles and the employee makes an annual claim with their Form 12. See for example https://www.revenue.ie/en/employing-people/documents/claim-car-expenses-capital-allowances.pdf.

- Under no circumstances can employee expenses ever do anything other than reimburse the employee and / or form part of the employee's remuneration package. Employers need to be very wary of the language they use when it comes to employee expenses.

- The Revenue have made it clear that they take a dim view on abuses of employee expenses – (emphasis added) "*Where the payment of remuneration to office holders and employees is labelled incorrectly as tax-free expenses, **the Revenue Commissioners will consider whether there is any element of fraud or neglect involved or whether a Revenue offence may have been committed** and will take whatever action they deem appropriate.*".

- The Revenue has always made it clear that expenses involved in travelling to/from work are not allowable. They have also made it clear that the employee's home will not usually be regarded as their '*normal* place of work. This remains the position even now when 'remote working' is so popular. That said, it is unclear what the practical application of the Revenue's approach to 'objective requirement' is – "*The office holder's or employee's home would not be regarded as the normal place of work unless there is an objective requirement that the duties of the office or employment must be performed at home*". In practice, the Revenue regard most employees as 'opting' to work from home and thus any trips to 'the office' – no matter how infrequent – are not allowed.

- Note that the Revenue usually ignore the 'intermediary's office' and regard the end-user's premises as the 'normal place of work' in contracting cases. Therefore MKB may engage IT Ltd to provide computer experts, and IT Ltd engages BT Ltd as such an expert. BT Ltd may send BT to MKB's offices. Even though there is no contractual relationship between BT and MKB, MKB's offices can still be regarded as BT's 'normal place of work' so BT can't claim mileage etc for trips to that location.

- Employee Expense claims should include the employee's home address. In the absence of same, the Revenue will query if sufficient checks are in place to ensure that the claim represents the correct distance, keeping in mind that the expense claim is restricted to the shorter of the distance between the employee's home or the employer's base and the destination involved in each journey. This restriction applies even if the employee actually does the trip. For example

    - Alannah lives circa 20 miles from her employer's office but only 1 mile from MOR's offices.
    - She drives into work that morning, visits MOR during lunch, returns to the office and heads home that evening.

- She departed from and returned to her employer's offices but her mileage claim for visiting MOR is still capped at 2 miles.
- How can her employer monitor this if her home address is not on her expense claim?

- The €3.20 per day for 'remote workers' does not apply to every employee who works from home. It is only available where the employee spends most /all of their time working from home and this arrangement is agreed with their employer. For example if your employee works at home for a few weeks on a once-off basis then you can't pay the €3.20. Likewise if they work from home the odd Friday, or if their duties involve working on client's sites every day etc etc. The requirement is that they perform 'substantive duties' at home for 'substantial periods of time'.

- The same criteria applies for vouched expenses as for 'flat-rate schemes' and therefore the same level of record-keeping and scrutiny should be applied. Simply reimbursing an employee for a hotel receipt and keeping the receipt is not sufficient – the Revenue will expect the employer to track what the trip related to and why it was regarded as a 'business cost' etc. Reimbursing for a 'lunch' and adding it back as 'Entertainment' is only part of the story – PAYE should have been applied if the lunch was not clearly a 'business cost' (which, when it comes to food, is always an interesting debate in practice).

What this sample list shows is that even compliant businesses can struggle with some of the nuances and that minor errors can be problematic. The slides include 'real-life' examples but the reality is that many more could have been included.

From January 2024, Revenue will be analysing and reconciling and contrasting all expenses being paid by Irish employers. Employers need to be prepared not only for implementing ERR in itself, but also the fall-out from same in due course.

This review is not just about ensuring that the employer's policies and procedures are consistent with the applicable rules etc, it may lead to employers adjusting their internal policies such as only processing expenses monthly or quarterly to reduce the administration burden. Employees can see their details so maybe employers need to draft a circular to employees in advance to outline the information that they will be reporting.

Miscellaneous

Pension Planning v Tax Planning:

- The line between using tax-planning and retirement planning is often blurred when it comes to pension funding. As a rule of thumb, clients should target a pension fund of circa €800k for their planned retirement age. The logic being that (i) this would maximise the €200k tax-free lump sum available and (ii) the €600k remaining in the ARF could be used to generate a pension of circa €24kpa.

- If the only income the individual has is their OAP and this €24kpa, then their ARF pension should avoid the marginal rate of tax. Therefore, in very crude terms, the effective tax rate on extracting their pensions will be < 20%. This compares favourably with 33% which is the CGT they would have paid on liquidating the same cash out of their company upon retirement, ignoring possible reliefs like ER and RR.

- On the other hand if the individual's position was such that they would be paying marginal rate tax on their pension, e.g. because they have rental or other income or because their pension fund value generates a larger 4% drawdown, the effective tax rate could be 34% - 37.5% which does not compare well with the 33% CGT rate.

- Of course the individual might desire a certain level of income in retirement and pensions are a tax-efficient way of providing same. For example Miriam may have been earning a Director's Salary of €90kpa for most of her life and wants a pension of €60k in retirement to supplement her OAP. This is 'retirement planning' rather than 'tax-planning' and makes perfect sense from Miriam's perspective. A tax advisor will baulk at paying tax at 33% but this is only one of many factors – Miriam might like the protection of an ARF and/or the annual income rather than a lump sum etc.

- There can all be a 'succession planning' aspect to ARFs and some clients fund large pensions with a view to delaying retirement until age 75 so that a large part of the ARF will pass via their Estate. However it is important to remember that the tax-efficiency of such a plan very much depends on who inherits same:
    - Spouse – assume t/f to a new ARF No CAT - pension drawdown taxed as normal
    - Spouse – no 'new ARF' – 40% income tax, no CAT.
    - Child < 21 – CAT as normal, no income tax
    - Child > 21 – 30% Income Tax, no CAT
    - Anyone else – marginal rate 41% first – Balance liable to CAT!

Incidentally, like everything else passing via an Estate, the ARF is at risk if the deceased had substantial creditors, or unexpected ones like the Revenue, DEASP or HSE.

CAT – Mandatory Reporting:

- Practitioners should note the proposed changes to S.46 CATCAs wherein FB2023 will insert a new subsection (4A) which requires automatic disclosure on an interest-free loan between close relatives – note the obligation arises even if interest is charged but the amount charged is less than the deposit interest rate.

- Where the loan exceeds €335k for at least one day during the relevant period. The context here is that an interest-free loan generates a deemed annual gift on 31st December each year based on the difference between what those funds would earn if held on deposit and the interest paid. If such a 'benefit' arises, the submission is mandatory.

- If you assume that the current deposit interest rate is 3%, and that Dad gave Son a loan of €150k, then Son has a deemed annual gift of €4,500. This gift would of course benefit from the annual SGE so only €1,500 would be 'taxable' albeit not immediately due to the Class A Threshold.

- In this example, Son would not have to submit a Return for 2024 disclosing the loan because it is < €335k. Disclosure is mandatory if (i) the loan is between close relatives or via a company owned by close relatives, (ii) there is a gift – i.e. the interest charged is too low or the loan is interest-free and (iii) there was no interest paid within 6 months of the year end and (iv) the loan balance was €335,000 or more at one stage during the year.

- Further guidance, and possible legislative adjustments, will follow which will address issues such as the nature of the Return to be submitted, the position where there are joint loans, clarification if any interest paid within 6 months is sufficient etc.

VAT on Property:

- Once described as 'the gift that keeps on giving' by a Revenue Official, VAT on Property continues to be a source of problems for Practitioners and their clients.

- The reality is that, while there are areas of genuine complexity, the vast majority of problems that arise in practice stem from the failure to properly consider the VAT aspects before a transaction takes place – e.g. before letting the property, before selling the property, etc. Always remember the old Maxim – 'Before = Options, After = Consequences".

- See slides for examples. See also Topical Tax Cases presentation for recent Appeal Decision which casts doubt on the Cancellation Adjustment.

Revenue Compliance:

- See slides and Speaker's Comments for details. The source for same includes the Revenue's Annual Report, The ITI/Revenue Branch Network presentation last September, TALC, client feedback etc etc.

NOTE: The RZLT & VHI Notes were written in the Summer so before the RZLT was delayed for 12 months:

Residential Zoned Land Tax (RLZT)

A new self-assessment 'property tax' called the Residential Zoned Land Tax (RZLT) was introduced in FA 2021, apparently to encourage the release of land for development and thus increase the housing supply. It will apply to land that is 'taxable land' (i.e. land which is serviced and zoned for residential use) on 1st January 2022, albeit it will be 2024 before anyone actually pays this new tax. The RZLT will be based on 3% of the market value of the 'taxable land'.

Certain properties will be excluded – e.g. residential houses and their gardens, albeit some owners will still be obliged to register for RZLT even if no tax is payable. There will be an annual Return due on 24th May each year from 2024 onwards.

Hopefully the below summary is useful but anyone wanting to know more about RZLT should explore the relevant legislation - Part 22A of the TCAs - and the Revenue's Guidance (see Tax & Duty Manual @ https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-22a/22a-01-01.pdf.)

The first 'chargeable date' for RZLT is 1st January 2022 – if land is 'taxable land' on that date then the owner of that land on 1st February 2024 will become liable to RZLT.

'Taxable Land'.

In general, RZLT will apply to land that ;-

(i) is zoned for residential use,
(ii) has services, or access to services, and
(iii) it is not covered by one of the exemptions.

This may appear to be relatively simple concepts, but as always with new taxes there are complexities and it will take time for interpretation to evolve as theory meets practice.

(i) Zoning – all about the Maps!

The land must be either zoned for residential use or zoned for mix use including residential development. On 1st November 2022, Local Authorities throughout Ireland published maps identifying land within the scope of RZLT. Updated and additional maps will be published during 2023 and Local Authorities will issue annual updated maps thereafter reflecting changes re. zoning, services etc each year.

These maps are available online and anyone owning land would be advised to explore their local map as soon as possible to establish the status of their land. Landowners can apply to their Local Authority to have their land excluded, and may appeal to an Board Pleanála if the Local Authority insists on including their land on the map.

Should the Revenue become aware of land that should have been included in the map but was omitted, they will inform the Local Authority so that the local map can be updated to include that land. Therefore landowners will need to review the published maps on an annual basis.

Landowners should explore their local maps as they may need to take action now to mitigate their RZLT obligations – for example farmers may need to ask their Local Authority to rezone some or all of their farm land if it current that falls within an area zoned for residential use, or owners of small parcels of land may seek to have their 'site' removed because it does not have sufficient access to services.

(ii) Services

The literature around RZLT references 'serviced land' but note that the legislation does not require that the land itself be serviced, only that "*it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development*".

In short, even if the land contains no services but the Revenue regard it as having sufficient access to services, it will be regarded as 'taxable land'.

Example from Revenue's Guidance:

- *Joan owns a farm on the outskirts of Dungarvan, Co Waterford. 5 hectares of Joan's farm is zoned suitable for residential use in the development plan in place.*
- *On 1 January 2022, the 5-hectare site had access to public services except for water supply and wastewater services.*
- *The land does not meet the relevant criteria for RZLT on 1 January 2022.*
- *Irish Water upgraded water infrastructure on the land in March 2023.*

⇨ *Joan's 5 hectares now meets the criteria for RZLT and will be included on a map prepared by and published by Waterford City and County Council.*

(iii) Exemptions

Certain properties are exempt from the RZLT, the most important being residential properties which are already liable for LPT and which have a garden of 1 acre or less. This will ensure that the majority of homeowners do not have to worry about RZLT, but see below for homeowners with large gardens or adjacent sites.

There are other exclusions from RZLT, including for example

- Land zoned for residential use but is in use (in compliance with planning – see 'unauthorised use' below) as a business liable to commercial rates and which provide services to residents of adjacent residential areas, e.g. a local shop, pub, café, employment uses such as offices, etc.
- Land zoned for residential use but in use to provide complementary services or facilities such as utilities, transport, community or recreational purposes, etc.
- Sites designated as derelict sites and liable to the derelict sites levy.

- Land zoned but not suitable for development, e.g. they are contaminated or they have historical/archaeological significance.
- Land zoned for mixed development which has been developed for non-residential purposes.
- Land that is authorised for use for a business liable to pay commercial rates.
- Land leased to third parties since before 2022 so that the landowner is prevented from developing the land.

Note that unauthorised use of the land for non-residential purposes might not prevent RZLT from applying. FA 2022 made some changes to this area – e.g. to allow retrospective authorisation, but any landowner hoping to avail of one of the RZLT exemptions should explore their planning permission.

Although exempt from paying RZLT, owners of residential property which appear on the map as falling with a zoned area may still be obliged to register for RZLT if the land upon which their house stands is great than 0.4047 hectares (1 acre). See below for how RZLT and LPT legislation interact. It would appear that failure to register could generate a €3,000 penalty! See below.

Note that the exemption for homeowners only covers the land (and yard, garage, shed, home office etc) that form part of the residential holding. If the individual has a house subject to LPT and another small site across the road, that site can still be liable to RZLT in its own right. See above about the possibility of having this site delisted if it does not have access to services.

Valuation:

The rate of RZLT is 3% of the land value. Where land is 'taxable land' on 1st January 2022, the first Valuation Date is 1st February 2024. Where land becomes 'taxable land' after 1st January 2022, the Valuation Date will be the 1st February in the year that RZLT first applies.

It is self-assessment so the onus is on the landowner to provide the valuation. The land is to be valued on 1st February every three years. For example, if Mr. X Ample has land worth €600k on 1st February 2024, he will pay RZLT of €18,000 for 2024, 2025 and 2026 but will need a new Valuation for 1st February 2027.

There is no obligation to obtain a formal valuation and other sources can be used – newspapers, local sales, etc. However surcharges will arise if the land is undervalued so landowners do have to consider the merit of paying for a formal valuation.

Compliance:

A landowner will be obliged to register for RZLT if (i) they own land which is included in a residential loan as per the 'final map' issued by their local authority, (ii) they are not excluded from the RZLT system, see above exemptions.

Once operational, the annual "liability date" will be 1st February, and the annual 'submission date' will be 23rd May. The initial trigger date is 1st January 2022 – where land is within the scope of RZLT on that date, the tax will become chargeable from 1st February 2024 onwards.

This is a self-assessment tax so the onus is on the property owner to register for RZLT. The registration process will become live later this year (2023) and the owner will be obliged to submit an annual Return and pay any tax due by 23rd May 2024 and each year thereafter.

Note - unlike most taxes which stop at 10%, the late submission surcharge for RZLT can be 30% if the Return is > 6 months late.

The key date for property owners is 1st February 2024 – the owner of 'taxable land' on that date will be the person liable to pay RZLT in 2024. Where there are multiple owners, only one RZLT Return will be required but all remain jointly and severally liable for the tax.

The tax will be payable on/before 23rd May 2024. As usual, there will be sanctions in non-compliance cases including for example late interest (8%), surcharges (10% - 30%), and/or penalties – the penalty for failure to register for RZLT alone if €3,000. There are also indirect sanctions such as the loss of tax clearance.

Some landowners will be have compliance obligations even if no tax is payable – for example home owners with a garden of > 1 acres might not be liable for RZLT but will still have to register and disclose details of this 'additional land'. It would appear that these are also potentially liable to the penalties and sanctions if they fail to comply.

It may be possible to defer the payment of RZLT, for example where residential development has commenced on the land then the tax will be deferred and may even be reduced or voided when the development is completed within the timeline outlined in the planning permission.

Note that failure to comply may result in the tax and/or late interest being charged against the land. In practice, this means that land cannot be sold until the RZLT is up to date. There will also be an RZLT aspect to all future property sales, e.g. the vendor must provide details to the Revenue and the purchaser, the purchaser will need to obtain RZLT clearance etc.

Example from Revenue's Guidance:

- *Rita owns 2.5 hectares of land that is a relevant site for the purposes of RZLT. Rita has filed RZLT returns and paid the tax due in respect of the site for 2024 and 2025. She has not commenced development of the site.*
- *In September 2025, Rita decides to sell the site to Frank. Prior to the completion of the sale Rita must file an RZLT Return with Revenue containing information in relation to the relevant site, the liable person and the purchaser. Revenue confirms that there are no outstanding amounts of RZLT payable at the date of sale.*
- *Frank purchases the site from Rita. The sale is completed in November 2025. Frank's first liability date in respect of the site is 1 February 2026.*
- *As this is the first year that Frank is liable to RZLT in respect of the site, 1 February 2026 is also the valuation date for the purposes of calculating his liability to RZLT for 2026*

RZLT will also become a feature of Estate cases. Where the landowner dies, the Executers will take over responsibility for ensuring that the annual RZLT is paid etc.

Incidentally, the personal responsible for dealing with the RZLT is the 'owner' but this term is designed broadly in legislation and basically includes any person who holds an interest or right to develop the land. In most cases the 'owner' will be obvious, but it could be the executer of an Estate or a developer with contractual rights to develop the land.

Houses v Gardens:

The RZLT legislation is intertwined with the LPT legislation which may lead to some interesting outcomes as this new tax develops. S.653O deals with what is and is not a 'relevant site' for RZLT and this contains two different exclusions for houses and their gardens in that (1)(a) excludes the 'residential property' – the house and garden – while (2) excludes the part of the garden that is > 1 acre.

We will revisit (2) later but first we must deal with 'residential property' - S.653 links the definition of 'residential property' to the Finance (Local Property Tax) Act 2012. This is from the Revenue's TDM:

"Residential property" is defined in section 2A of the Finance (Local Property Tax) Act 2012 as amended ('the Act'). Section 2A states the following–

(1) In this Act, "residential property" means any building which is in use as, or is suitable for use as, a dwelling.

(2) A shed, outhouse, garage or other building which is appurtenant to or usually enjoyed with a residential property shall be considered, for the purposes of this Act, to form part of the residential property.

(3) Subject to subsection (4), yards, gardens and other lands appurtenant to or usually enjoyed with a residential property as its garden or grounds shall be considered, for the purposes of this Act, to form part of the residential property.

(4) Where the total area of the yards, gardens and other lands, referred to in subsection (3), exceeds 0.4047 hectares, only those parts of such yards, gardens and other lands, which would be the most suitable for occupation and enjoyment with the dwelling, up to a total area (exclusive of the area, at ground level, of the building referred to in subsection (1)) of 0.4047 hectares, shall form part of the residential property

Therefore where the garden is > 1 acres, the excess is not covered by the 'residential property' exemption in S. 653O (1)(a) because that portion is excluded from the definition of 'residential property' as per (4) above. This 'excess garden' is instead captured by S.653O(2) which confirms that the following is not a 'relevant site' for RZLT purposes – "*So much of a site as does not form part of a residential property, within the meaning of the Finance (Local Property Tax) Act 2012 , by virtue only of section 2A(4) of that Act, shall not be a relevant site.* "

Example:
- Sadhbh built her home on a 2 acres site held by her.
- The house and 1 acre surrounding it are excluded from RZLT because of S.653O(1) as this is a 'residential property'.
- The remaining 1 acre is not 'residential property' as it is excluded by S.2A(4) F(LPT)A 2012, but it is exempt from RZLT because of S.653O(2).

This distinction facilitates the different RZLT treatment for homeowners -

- S.653Q imposes the charge to RZLT but only on Relevant Sites and therefore residential properties as per S.653O are exempt.
- S.653A imposes the obligation to register but this includes not only owners of Relevant Sites but also Owners of a site that would be a Relevant Site but for S.653O(2).

Therefore the RZLT legislation ensures that any homeowner with lands of > 1 acre still has to register for RZLT even though they are not liable for RZLT. It would appear that such owners are not 'liable persons' as per S.635P and therefore not obliged to submit a Return via S.653T, which begs the question as to why these people must register to begin with?

Further details as to what obligations owners of large gardens may have re. RZLT are awaited. In the meantime, the above legislation needs to be considered in the context of the Revenue's view of what is and is not a Residential Property.

As above. The LPT definition references "*yards, gardens and other lands appurtenant to or usually enjoyed with a residential property as its garden or grounds*" . The legislation caps the size of same for LPT purposes at 1 acres but there is a wider question – when does the ancillary land and/or buildings stop being part of the residential property and become properties in their own right?

As per the Revenue, "*The appurtenant* ***buildings and land are to be used for the benefit and enjoyment of the occupants of a dwelling and should have a domestic or residential purpose****. This excludes buildings and land that have a purely commercial or business function, such as, for example, a workshop used for light manufacturing activity. An external room used as an office by a person who works from home is not excluded. Land, farmyards and buildings used for farming are not part of a residential property (despite their adjacent location to a farmhouse) and they are not liable for LPT. However, a farmhouse is not treated any differently to other dwellings in relation to any associated building or land that is not used for farming. This means that a domestic garden, for example, is treated as part of the residential property but a haggard, farmyard or a commercial glasshouse is not*."

It will be important to see what developments arise in relation to this area going forward. What if, for example, Breandán has a house sitting on 6 acres? The 1 acre around the house is clearly a garden but the remaining 5 acres are just sitting there unused. Obviously these 5 acres are not part of his 'residential property' because of the 1 acre cap. However if this 1 acre cap did not exist, would these 5 acres be excluded anyway because they have no 'domestic or residential purpose'? In other words

- Breandán's 5 acres are not within the scope of S.2A
- Therefore they are not S.2A (4)
- Therefore they are not captured by S.653O(2)
- Therefore RZLT applies?

Breandán may have to consider if he needs to apply for a different exclusion, e.g. these 5 acres do not have services or adequate access to same.

Practical Considerations:

It is likely that RZLT will become a specialised area with only a few Practitioners seeking to specialise in same. The Speaker suspects that, while this new tax will evolve over the next few years it has all of the hallmarks of a regime that you either immerse yourself in completely or stay clear of, and he is very much leaning towards the latter.

Nevertheless, there are certain issues that may merit closer attention in the short term for Practitioners and their clients, including for example:

- Most homeowners have completely ignored RZLT and vaguely link same to 'land banking' and something developers need to worry about. The reality is that anyone with a large garden or with a holding split into different sections may have obligations and need to explore same. Therefore Practitioners should consider circulating something to their clients to encourage them to take an hour to explore their position rather than just assuming that they have no obligations.

- Many other landowners have a similar problem, i.e. they have not properly considered their RZLT exposure. The obvious example is farmers who have yet to explore the zoning status of their land and/or engaged with their Local Authority to change same. However they are not the only ones –there are numerous other clients who may have RZLT obligations who should be exploring their position, including for example:
    - Suilta got a site from his uncle years ago but did not yet apply for planning on same.
    - Fiachra inherited an old derelict house that is not liable to LPT because it is 'not suitable for use as a dwelling'.
    - Alannah converted the space next to her premises into a make-shift car park but did not get planning permission for doing so.
    - A Charity has land around its premises.

- S.653AK makes it clear that RZLT is not an allowable deduction for taxes. Practitioners should make a note to addback any RZLT costs going forward. As per Revenue – RZLT " *is not deductible for the purposes of calculating profits or gains to be charged to income tax, corporation tax or capital gains tax"*.

- Further clarification is needed regarding 'large gardens' and when land around the house stops being a garden and becomes land. In the meantime anyone with > 1 acre and especially if they also contain workshops or other 'non-residential' units adjacent to their homes may need to explore their options.

- If a landowner decides to develop their land for residential purposes, it can take years to get planning permission. In the interim, RZLT will be payable. There is a deferral option within RZLT where planning has been obtained but only in certain circumstances and only where the planning permission has already been obtained. For Example
    - o Bob buys land for €2m and he applies for planning in 2023.
    - o He does not get planning until 2025, and this is the appealed.
    - o In 2028 the appeal is upheld so Bob loses his planning.
    - ⇨ Bob is liable to RZLT of €480k – plus interest if he availed of the deferral option
    - ⇨ Bob is trapped in RZLT – he will struggle to find a buyer and struggle to get planning, but gets punished for not doing either.

- As above, but when Bob gets planning to develop the site, he has to wait because developing same is not viable due to, for example, spikes in labour costs or material cost etc, similar to recent times where Brexit and the Ukraine war has seen ‘unusual market conditions’. Bob is stuck with land he must either sell at a loss or develop at a loss.

From a Practitioner perspective, the last two examples involving Bob show how important it is to incorporate RZLT into financial projections. If a client is considering buying land to develop, the additional RZLT risk could make a viable project into a financial problem.

Many developers are already commenting on the ‘bluntness’ of RZLT and are baulking at taking on new developments. This is a problem because the purpose of RZLT is to encourage landowners to use their land for residential development or to sell it to someone who will. To do so, there needs to be developers willing to buy the land and/or engage in the development of same – and the feedback thus far has not been positive.

Ironically, the impact of RZLT may be to depress residential development as it may motivate sellers but scare away potential buyers.

Vacant Home Tax (VHT)

Introduced via S.96 FA 2022, this is yet another new self-assessment based property tax. The legislation is contained in Part 22B TCAs, with elements linked to the LPT legislation. There are many ‘grey areas’ which, hopefully, will be addressed by Revenue in the coming months.

This is commonly referred to as the Vacant Home Tax or VHT, and below will reference ‘home’ or ‘house’ but it is capable of applying to any residential unit including apartments. In addition the summary deals with individuals but VHT can apply to any owner including companies and trusts.

VHT Rate:

The rate of VHT is the property’s “Basic LPT” x 3, the Basic LPT being the rate of LPT as determined by the LPT Valuation bands but before the Local Authority Adjustment.

As most Practitioners know, LPT is levied according with which of the 19 rate bands the house’s value falls into – for example a house valued at €360k falls into LPT Rate Band 4 and the LPT arising is €405. Remember that the LPT bands stop at €1.75m and houses valued at > €1.75m are assessed using tiered % rates

The LPT bands only calculate the ‘Basic LPT’. Local Authorities then have the power to vary this by 15%. Therefore a house valued at €360k could be liable to LPT ranging €344.25 to €465.75 depending on the Local Authority’s policy. Full details of the LPT rate bands and the different approached by local authorities can be found at -

https://www.revenue.ie/en/property/local-property-tax/valuing-your-property/determining-lpt-charge.aspx

VHT ignores the Local Authority Adjustment and is based on the Basic LPT. For example a Vacant House valued at €360k will be liable to VHT of €1,215 even if that property's actual LPT bill is slightly higher or lower than the Basic LPT rate of €405. The following is a sample of the potential VHT on a range of houses which illustrates just how expensive this new tax can be for homeowners:

Vacant Home Value	***VHT Payable***
€0 - €200,000	€270
€200,001 - €262,500	€675
€262,501 - €350,000	€945
€350,001 - €437,500	€1,215
€437,501 - €525,000	€1,485
€525,501 - €612,500	€1,755

Don't forget that the house is still liable to LPT. Therefore a Vacant Home valued at, for example, €275,000 could face property taxes of > €1,300 each year.

Compliance:

The VHT compliance year runs from 1st November to 31st October each year, with the payment date being the following 31st March. The first 'chargeable period' begun on 1st November 2022 with the first VHT Return being due on/before 7th November 2023.

The legislation – S.653AY – confirms that 1st January will be the payable date (if paying via Annual Debit Instruction, the instruction must be made to Revenue before 1st January 2024 but VHT payment will not be taken until 21st March 2024).

Further details of the VHT Return will be published in due course but it will be an on-line regime and VHT will be paid via DD or Debit Instruction.

Where there are multiple owners, only one Return is required – the chargeable person is usually the same person responsible for the LPT submissions but all owners remain jointly and severally liable for the VHT.

There will be the usual sanctions for non-compliance, e.g. late interest on unpaid tax, a late submission surcharge of 5% or 10%, possible fixed penalties etc. At present, VHT will not become a charge of the property (and thus, unlike LPT for example, VHT clearance is not part of the sale process of the house).

It is worth noting that the legislation imposed an obligation on house-owners to retain certain records, and also gives the Revenue the power to request the house-owner to submit details about a property and maybe even prepare and deliver a VHT Return, even if VHT is not payable. **Therefore, all owners of residential properties need to consider what obligations they may now have to retain certain records, including for example proof of how the property was**

used during the year. These records can include utility bills, waste collection bills, evidence of short-term lettings, etc.

'Vacant Home':

The VHT is only payable if the property is regarded as a 'Vacant Home' and it is not covered by one of the exclusions or exemptions. This begs the question – what is a 'Vacant Home'?

A 'Vacant Home' is defined in S.653AN as *"a residential property in respect of which a charge to vacant homes tax arises under section 653AO*". Elsewhere in that section it confirms that a *residential property* is linked to the LPT legislation – Finance (Local Property Tax) Act 2012. Therefore if the property is not regarded as a 'Residential Property' then it cannot be liable to VHT, for example any property that is not in use or suitable for use as a dwelling is not liable to VHT.

Therefore in order to be a Vacant Home the property must first be a *residential property* but must also be liable to VHT as per S.653AO. Therefore S.653AO is the core provision and merits careful consideration:

S. 653AO.

(1) Subject to and in accordance with the provisions of this Part, there shall be charged, levied and paid a tax to be known, and which is referred to in this Part, as 'vacant homes tax' in respect of a residential property for a chargeable period in which the residential property is in use as a dwelling for less than 30 days, other than a residential property—

(a) in respect of which no local property tax was payable in respect of the liability date falling in the year in which the chargeable period commences,

(b) that was the subject of a relevant tenancy for a period of not less than 30 days during the chargeable period, or

(c) that was the subject of a sale during the chargeable period.

(2) Vacant homes tax shall be payable in respect of a residential property for a chargeable period by the person that is the chargeable person in relation to the property on the relevant date.

(3) Where more than one person is a chargeable person in relation to a residential property on the relevant date, those persons shall be jointly and severally liable for the vacant homes tax payable in relation to the property. (4) Notwithstanding subsection (2), the vacant homes tax may be paid by another person on behalf of a chargeable person.

As you can see, S.653AO incorporates a number of exclusions from VHT, for example:

- It only applies to 'residential property',
- It only applies to residential property that "*is in use as a dwelling <u>for less than</u> 30 days*",
- It excluded properties where "*no local property tax was payable…",*
- It excludes properties that were subject to a '*relevant tenancy'* for 30+ days,
- It excludes properties that were sold during that VHT period.

These exclusions are separate to the specific exemptions for VHT which are contained in S.635BC dealt with below. If a property is excluded from VHT via S.653AO then it is also excluded from the definition of a 'Vacant Home' and therefore outside the scope of VHT, subject of course to the Revenue's power to request a Return and/or details. It appears that the S.653BC exemptions must be claimed and thus a VHT Return will still be required.

It will be interesting to see what guidance will emerge regarding S653AO itself, and how it interacts with the Exemptions in S.653BC. See *Discussion Points* below. For now the following should be noted:

- It is not clear what constitutes being '*in use as a dwelling'*. The Revenue guidance includes an example of the owner spending the some weekends in her Galyway holiday home as qualifying for the VHT exclusion which would imply that seasonable occupation is acceptable. It is important to remember that the onus rests with the owner to prove that the property was '*in use as a dwelling'*, so records such as electricity usage, gas usage, waste collections, etc should be retained for at least 6 years.

- S.653AO makes it clear that VHT is not application if no LPT was payable for that period. This would appear to exclude from VHT any LPT-exempt properties e.g. houses unoccupied because of long-term illness, houses for permanently incapacitated individuals, properties subject to commercial rates etc

- The exclusion for rented properties only applies is it is a '*relevant tenancy'*. S.653AN makes it clear that any letting that does not involve MV rent is excluded, as is any letting between connected parties.

- The definition of a Sale in S.653AN included transactions for no consideration or for less than market value, implying that the gift of a property is sufficient to avoid VHT.

Exemptions:

S.653BC deals with the Exemptions from VHT and makes it clear that these 'may be claimed' in the VHT Return. See the legislation for details of these exemptions but they can be summarised as follows:

- The property owner has died in that period or in the previous 12 months and they occupied the property as their sole or main residence prior to their death.

- A Grant of Representation has issued to the Estate of a property owner, and it was the owner's sole or main residence prior to their death.

- The property is actively being marketed 'For Sale' during the period for market value price and with no conditions which would impede the sale. The Revenue regard 'actively marketed for sale' as involving "a genuine and sustained effort" to promote the property for sale to potential buyers.

- The property is actively being advertised 'For Rent' for sale during the period for market value rent and with no conditions which would impede a tenancy agreement. See above re. 'genuine and sustained effort' to market the property.

- Properties prevented by a Court Order from being occupied or sold

- Where a property was unavailable for 6+ months because of on-going renovations, an exemption may be claimed. The 'works' must have been carried out without undue delay, must have last for 6 or more month and must fall into one of these two categories:

(i) A registered professional (architect, surveyor or QS) certifies that occupation would have posed a threat while the works were on-going and, if required, planning permission was obtained before the works commenced, OR

(ii) The cost of the works were 20% or more of the value of the property.

The works must involve "*structural works, substantial repairs or substantial refurbishment*". The Revenue give an example wherein the owner replaces windows, services the boiler and adding some furniture as not qualify 'works'.

- Properties unoccupied due the long-term illness of the owner – it must have been their home previously and their infirmity must be certificated by a medical practitioner.

The above is a crude summary and anyone seeking to avail of an exemption should review the actual legislation. The conditions applicable to the different exemptions are important, as the following examples illustrate:

- Breandán died in 2022 and via his Will bequeathed his home to his son, Liam, along with the family's holiday home. The home may be exempt from VHT, but not the holiday home as it was not the deceased's sole or main residence.

- Fiachra advertises his vacant apartment For Sale at €500k. Other similar apartments in that location are available for €250k. As the price exceeds the MV, the VHT exemption will not apply.

- Suilta is selling his seaside house but it is a condition of the sale that Suilta and his family retain the right to camp in the garden, and/or to put a mobile home in the garden, for 3 months each summer. This condition would impede a sale and thus the VHT exemption will not apply.

- Brighid is advertising her duplex for rent but wants 9 month's rent paid in advance. This requirement would 'impeded a tenancy agreement' so she would not qualify for the VHT exemption.

- Boann is advertising her apartment for rent for €1,200 per month. Other similar apartments in that building and nearby are available for €800pm. This would not qualify for the VHT exemption.

- Miriam commenced renovating her rental apartment and the initial builder was on-site for 4 months. She had a dispute with this builder so the works stopped and the property was empty until a new builder was hired the next year and they finished the renovation in 3 months. The Renovation Exemption is not available because the 'works' were no ongoing during any one period for a period of 6 months.

- Alannah was living alone in her house when she suffered a stroke. She was released from hospital but advised that she cannot live alone so she moved in with her sister, Lauren. Alannah will be entitled to the VHT for her home.

- Alannah was living alone in her house when she suffered a stroke. She was released from hospital but advised that she cannot live alone so her sister, Lauren, moved in with Alannah. Lauren is NOT entitled to an exempt from VHT.

In all of the above examples the properties might be exempt from VHT for other reasons, for example in the first example Liam might stay in the holiday home for > 30 days etc. In all cases the onus rests with the claimant to prove that they are entitled to the exemption.

Discussion Points:

- Practitioners should note that VHT is not an allowable deduction for other taxes *(S.653BQ – "Notwithstanding any provision of the Tax Acts or Capital Gains Tax Acts, in computing the amount of profit or gains to be charged to income tax, corporation tax or capital gains tax, no sum shall be deducted in respect of any amount of vacant homes tax.")*.

- The restriction on connected-party lettings is not circumvented by using arms-length terms. This appears to be an anti-avoidance measure but the reason for same is unclear:
  - Cilly Roole advertises her apartment for rent at €850 per month which is consistent with MV terms. She does not have to pay VHT.
  - She later rents it to her nephew for €900pm – as they are connected parties so this will not qualify for the rental property exclusion.
  - However it is excluded if her nephew lives there as it is 'in use' as a dwelling'.
  - If she rented it for < MV then it would be excluded anyway – was the concern that she would rent it for MV and leave it vacant just to circumvent VHT?

- An actual Sale can be an arms-length sale or a gift, while the exemption for properties that are 'For Sale' is limited to MV terms. Delays in concluding a Sale might not cause VHT to become payable – because it is still For Sale', but delays in concluding a gift could.

- The legislation imposed obligations on all 'chargeable persons' to retain certain records. A chargeable person is basically anyone liable to LPT. **Therefore the VHT legislation imposed an obligation on all homeowners to retain certain records** – including for example utility bills. The Revenue can require any person to provide evidence that their property was in use for 30 days or more.

- The first VHT period runs from 1st November 2022 until 31st October 2023. Therefore clients have until October to establish their position and, possibly, take precautions to ensure they do not become exposed to VHT. This might involve spending more time than planned in their holiday home, putting someone into a vacant rental property that is being upgraded but not renovated, getting organised and putting it up 'For Sale' or 'For Rent' etc. In all cases, the client must consider what documentation they can and should retain to support their claim to be excluded or exempt.

The apparent logic for the VHT was to increase the housing supply, with some insiders noting that this was less about raising taxes and more about 'changing behaviour'. However based on media coverage, it appears that there were only 166,752 properties listed as 'vacant dwellings' in the 2022 Census, and the Department concluded that this "*lies within a range that is considered to be in line with a functioning housing market*".

The Census also noted that circa 66,000 of these were holiday homes which, as above, are unlikely to be liable to the VHT. Taken into account the number of properties listed as vacant but which would have been rented or sold anyway, the number of vacant properties that are excluded from VHT because they are derelict (20,000+) or exempted for other reasons, and the relevant number falls well below 100,000 with some estimates being a little as 4,000 properties being effected. The Budget documents projected circa €3m - €4m pa.

Some commentators have argued that the impact of VHT and LPT is to encourage dereliction! Therefore it is reasonable to ask what the real purpose of VHT is? Does anyone really believe that we created a brand new tax and all this entails – circa 20 pages of legislation, a new on-line system, deadlines, appeals, etc etc – to raise such small amounts to impact a hand-full of properties? One client explained VHT as simply another 'Big Brother measure'.

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