



81TACD2021

BETWEEN/



Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal pursuant to section 956(2)(a) of the Taxes Consolidation Act 1997 as amended (hereinafter referred to as “**TCA 1997**”) by the Appellant against inquiries into his tax affairs commenced by the Respondent in 2012.



B. Background

2. The Appellant resides in [REDACTED], County [REDACTED] and is a director and shareholder of a number of Irish registered companies. The Appellant is married to one [REDACTED].
3. Arising from a High Court Order dated the 24th of July 2006, obtained by the Respondent's Offshore Assets Group against a number of financial institutions, in 2009 the Respondent received notification from Allied Irish Banks Plc ("AIB") of a series of offshore transactions with which the Appellant was associated.
4. In total, there were four transactions notified to the Respondent (hereinafter referred to as the "**Notified Bank Transactions**"), each of which involved a payment by bank draft into an account held with AIB in the Isle of Man, the details of which are as follows:-

Transaction 1

Transaction date: 28th November 1996
Lodgement to: AIB IoM Ltd
Demand draft No: 022298
Payee on draft: [REDACTED]
Draft purchased: AIB, [REDACTED]
Purchasers of draft: [REDACTED] & [REDACTED]
Amount: IRE252,588.29

Transaction 2

Transaction date: 29th November 1996





Lodgement to: AIB IoM Ltd
Demand draft No: 0222313
Payee on draft: [REDACTED]
Draft purchased: AIB, [REDACTED]
Amount: IR£20,483.75

Transaction 3

Transaction date: 2nd January 1997
Lodgement to: AIB IoM Ltd.
Demand draft No: 021255
Payee on draft: [REDACTED]
Draft purchased: AIB, [REDACTED]
Amount: IR£16,000.00

Transaction 4

Transaction date: 30th December 1997
Lodgement to: AIB IoM Ltd.
Demand draft No: 000264
Payee on draft: [REDACTED]
Draft purchased: AIB, [REDACTED]
Amount: IR£5,000.00

5. Mr. Paul Walsh, a Revenue Officer working with the Respondent's Offshore Assets Group, wrote to the Appellant on the 14th of May 2010 and advised the Appellant that he had been notified of a transaction with which he had been associated involving an offshore account. The letter invited an explanation for that association to include, if appropriate, a disclosure of any undeclared liabilities together with payment related thereto.



6. The Appellant's tax agents replied to the Respondent on the 31st May 2010.

The letter stated that:-

- (a) the Appellant's late brother, [REDACTED], had an account with AIB IoM Ltd;
- (b) [REDACTED] did not have Irish domicile and for a large number of years was not tax resident in Ireland;
- (c) [REDACTED] lived an unconventional lifestyle and travelled between and lived in a number of countries;
- (d) owing to his brother's unconventional lifestyle, the Appellant held a fiduciary role in looking after the account with AIB IoM Ltd on behalf of his brother;
- (e) arrangements were being to have the funds transferred to the Appellant, who had inherited the funds. The tax agents had been working with the Appellant's solicitor over the previous few months to secure a release of the funds and an inheritance tax return would be filed shortly thereafter.

7. By further letter dated the 31st of May 2010, the Appellant's tax agents submitted a Form IT38 gift/inheritance tax self-assessment return dated the 13th of April 2010 to the Respondent's Capital Acquisitions Tax section. The return recorded that:-

- (a) the form was completed by the Appellant as a beneficiary;
- (b) the donor was his late brother, [REDACTED], who had died on the [REDACTED] 2005;
- (c) [REDACTED] had been domiciled in Northern Ireland and was resident or ordinarily resident in the State at the time of his death;



- (d) the Appellant had received an inheritance from his late brother on the 4th February 2010 of GBE1,406,406.00;
- (e) the source of the inheritance was cash held with AIB IoM Ltd; and,
- (f) the amount of inheritance tax calculated as due and owing and discharged was €320,495.00.

8. The IT38 return was accompanied by a memorandum prepared by the Appellant's tax agents and dated the 15th of April 2010. The memorandum recorded, *inter alia*, the following:-

- (a) [REDACTED] was born on the [REDACTED] [sic] and died on the [REDACTED] 2005;
- (b) his domicile of origin was Northern Ireland and he held a British passport;
- (c) he led an unconventional lifestyle and lived for long periods in a number of different countries;
- (d) he was not resident in Ireland until shortly before his death;
- (e) he had close connections with [REDACTED] traders, both in terms of business and lifestyle, and dealt extensively in the trading of [REDACTED] in the countries in which he lived;
- (f) the sale proceeds from his [REDACTED] dealing activities were lodged to his account with AIB in the Isle of Man;
- (g) due to his unconventional lifestyle, the Appellant had a fiduciary type role in looking after these funds and both of their names were on the bank account;
- (h) there was a filial bond between the brothers and there was an understanding that the Appellant would benefit on his brother's death;





- (i) there was a joint tenancy arrangement in place in relation to the account and the funds passed to the Appellant by survivorship;
- (j) the account was governed by the law of the Isle of Man and there were factors such as the production of the death certificate and securing the agreement of AIB Isle of Man that the funds could be passed to the Appellant; and,
- (k) these factors meant that the Appellant did not become entitled to the funds until the 4th of February 2010.

9. The memorandum was accompanied by a document addressed "*To Whom It May Concern*" which stated as follows:-

"I [REDACTED] DO HEREBY STATE AND CONFIRM THAT THE BANK ACCOUNT AC NO. [REDACTED] HELD IN THE AIB BANK ISLE OF MAN IN THE NAMES OF [REDACTED] [REDACTED] AND [REDACTED] [REDACTED] WAS OPENED SOLELY FOR MY BENEFIT AND THAT THE MONIES LODGED TO THE ACCOUNT WERE MY MONIES AND THAT THE ACCOUNT OPERATED ON MY INSTRUCTIONS AND FOR MY BENEFIT ONLY.

SIGNED, [REDACTED]"

10. The said document was dated in manuscript the 25th of March 2004 and bore the signature of [REDACTED].

11. Mr Walsh wrote to the Appellant's agents on the 14th of June 2010 and advised that, based on the information supplied by them in their letter of the 31st of May 2010, he was treating the matter as closed.



12. The Appellant's file was subsequently reviewed by the Offshore Asset Group of the Respondent and Mr Walsh wrote again to the Appellant's agents on the 9th of August 2012. The letter noted that they had been advised that the Appellant's late brother had an account with AIB IoM Ltd. and the Appellant had a fiduciary role with regard thereto. However, the Notified Bank Transactions from AIB disclosed that the lodgements to the account with AIB IoM Ltd. were by way of drafts made out to the name of the Appellant and included substantial amounts drawn on the account of a named couple living in [REDACTED] Co [REDACTED]. Mr Walsh therefore sought a full explanation for all lodgements to the account in the Isle of Man.

13. By letter dated the 7th of September 2012, the Appellant's agents advised that as the queries the Respondent was raising were outside the four year time limit, they were entering a protective appeal pursuant to section 956(2) of TCA 1997. Without prejudice to the Appellant's rights under section 956, they further advised that the late [REDACTED] had made a written declaration dated the 25th March 2004 which stated that he was the beneficial owner of the account with AIB IoM Ltd.

14. Mr Walsh replied to the Appellant's agents on the 11th September 2012 and noted the appeal by the Appellant. The letter nonetheless requested a full reply to the Respondent's letter of the 9th August 2012 regarding the lodgements by the Appellant to the account at AIB IoM Ltd and sought an explanation as to the source of the monies lodged. The Respondent also sought an explanation as the circumstances in which [REDACTED] thought it necessary to make the aforesaid declaration that he was the beneficial owner of the account at AIB IoM Ltd.





- 15.** At some point between October 2012 and March 2013, Mr Walsh ceased to be directly involved with the Appellant's file and Mr Henry Oliver, a Revenue Officer working in the Investigations & Prosecutions Division of the Respondent, took over the investigation.
- 16.** Following a number of reminders from the Respondent, the Appellant's agent wrote again to the Respondent on the 3rd of April 2013. The letter was expressly stated to be without prejudice to the Appellant's right of appeal and enclosed a letter from AIB dated the 11th of March 2013 which gave details of bank accounts held solely or jointly by the Appellant and his wife. The letter from AIB did not make reference to the Isle of Man accounts. The letter further advised that the issue of lodgements to the Isle of Man account had been dealt with in their previous correspondence with and submissions to the Respondent, and enclosed copies of same.
- 17.** Mr Oliver wrote to the Appellant's agents on the 26th of September 2014 and advised that the Respondent's letters dated the 9th of August and the 11th of September 2012 outlined issues giving rise to concern and which appeared not to have been addressed in the agents' response. The letter gave details of the Notified Bank Transactions and requested a full narrative to outline the nature, source, origin and character of these lodgements. The letter further requested an explanation as to why the Appellant's wife was named on the account, copies of the Will of the late [REDACTED] and the grant of representation in the estate, a brief background as to the residence status for taxation purposes of the late [REDACTED], and a copy of all bank statements from AIB IoM Ltd in respect of A/C No. [REDACTED].





18. By letter dated the 21st of October 2014, the Appellant's agents replied and advised that an appeal had been entered under the provisions of section 956, all subsequent correspondence had been on a purely without prejudice basis, and the approach now being taken by the Respondent meant that they had to insist on the implementation of section 956(2)(b).

19. The appeal was duly notified to the Office of the Appeal Commissioners by Mr. Oliver on the 3rd of September 2015.

C. Relevant Legislation

20. Section 956 of TCA 1997 provides as follows:-

(1) (a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector –

- (i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and*
- (ii) may assess any amount of income, profits or gains or, as respects to capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.*

(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a)(i) shall not preclude the inspector –





- (i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and*
- (ii) subject to section 955(2), from amending or further amending an assessment in such manner as he or she considers appropriate.*

(c) Any enquiries and actions referred to in paragraph (b) shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2) (a) A chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in subsection (1)(c) in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of subsection (1)(c) may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.





(b) Any action required to be taken by the chargeable person and any further action proposed to be taken by the inspector pursuant to the inspector's enquiry or action shall be suspended pending the determination of the appeal.

(c) Where on the hearing of the appeal the Appeal Commissioners –

- (i) determine that the inspector was precluded from making the enquiry or taking the action by reason of subsection (1)(c), the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or*
- (ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action.*

21. Section 895(6) of TCA 1997 provides as follows:-

Where in any chargeable period a resident opens, either directly or indirectly, a foreign account, or causes to be opened a foreign account in relation to which the resident is the beneficial owner of the deposit held in that account, the resident shall, notwithstanding anything to the contrary in sections 950 or 1084, be deemed for that chargeable period to be a chargeable person for the purposes of sections 951 and 1084, and the return of income (within the meaning of section 1084) to be delivered by the resident for that chargeable period shall include the following particulars in relation to the account –

- (a) the name and address of the relevant person with whom the account was opened,*





- (b) the date on which the account was opened,*
- (c) the amount of the deposit made in opening the account, and*
- (d) the name and address of the intermediary, if any, who provided a relevant service in relation to the opening of the account.*

D. Evidence given on behalf of the Respondent

22. It was accepted by the Respondent that, unlike most other tax appeals, the burden of proof in an appeal pursuant to section 956(2)(a) rests on the Revenue Commissioners. Accordingly, at the hearing of this appeal I heard evidence from Mr Oliver and from Mr Walsh in support of the Respondent's position.

23. Mr Oliver gave evidence in relation to the correspondence outlined in the Background section of this Determination *supra*. He testified that the reason that the investigation, which the Respondent advised would be treated as closed in their letter of the 14th of June 2010, had been recommenced in August 2012 was because the Notified Bank Transactions concerned lodgements to the Isle of Man account by the Appellant.

24. Mr Oliver testified that the Respondent did not accept that the Appellant had received an inheritance from his brother as recorded in the IT38 return, and believed that the facts of the case required a serious review of the source of the funds that were the subject of the return.





25. Mr Oliver further gave evidence in relation to the Form 12 tax returns submitted on behalf of the Appellant for 1996/1997 and 1997/1998. These returns recorded the Appellant's directorship of two companies named [REDACTED] Limited and [REDACTED] Limited, and Mr Oliver testified that the Appellant was also a director of three or four other companies which were not listed in the returns. Mr Oliver stated that the omission of these company directorships meant that the returns were incorrect.

26. Mr Oliver also gave evidence to show that the returns did not record the opening of any foreign bank accounts during the periods covered by the returns.

27. When asked why he believed that he had reasonable grounds that the returns might be insufficient in the context of negligence or fraud, Mr Oliver stated:-

"Well, from the information provided by the Appellant's advisers I believe I have reasonable grounds to believe that the returns are deficient to some extent when viewed with the fact that I have information provided by the banks that the Appellant has lodged cheques that were made out to himself to an Isle of Man bank account, number one. And number two, there's no reference in the tax returns to any offshore account. Number three, the account in question is in the name of the Appellant and his wife. Finally, the late submission of a CAT return in and around the same time my colleague's letter issued regarding the particular transactions offshore. So for that reason I believe that I have reasonable grounds to believe that the returns are incorrect."

28. Asked to comment on the significance, if any, of the fact that the IT38 return was submitted more than five years after the death of [REDACTED], but





only a fortnight after the letter of enquiry dated the 14th of May 2010, in circumstances where the estate was comprised solely of a single bank account, Mr Oliver testified that:-

“Well, it certainly alerted me to, it enhanced my view that I had reasonable grounds for believing that this account may well be that of the Appellant and that the funds lodged to it were indeed earned by the Appellant and that the CAT return was being used as a vehicle to rectify something that’s not grounded, based on the information that I have available to me.”

29. In cross-examination, Mr Oliver accepted that it was the state of mind of the Inspector who makes the enquiry at the time the enquiry was made which was relevant to an appeal pursuant to section 956. However, he did not accept that it was the enquiry of the 9th of August 2012 which was under appeal and submitted that the appeal arose in the context of an ongoing investigation which continued after he had taken over the file from Mr Walsh. He did accept that it was the letter dated the 9th of August 2012 which commenced the enquiry, and that Mr Walsh’s subsequent letter dated the 11th of September 2012 simply expanded on the initial enquiry.

30. Mr Oliver further accepted that it would have been possible for someone other than the Appellant to lodge funds in his name to the Isle of Man account if they had the relevant account details.

31. Mr Oliver further accepted that the IT38 return and the memorandum prepared by the Appellant’s tax agents appeared on their face to predate the initial letter from Mr Walsh in May of 2010. However, he suggested that they might have been prepared in circumstances where the Appellant had been





advised by AIB that the bank would be notifying the Respondent that he was connected with offshore transactions.

32. Mr Oliver also accepted that he was unable to give evidence in relation to Mr Walsh's state of mind at the time that he wrote to the Appellant's tax agents.

33. Mr Oliver further accepted that section 895(6) only became operative when TCA 1997 came into effect on 6 April 1997, and that it only required the disclosure of an offshore bank account in the tax return for the year in which the account was opened. Mr Oliver accepted that he had no evidence as to when the Isle of Man bank account had been opened.

34. Mr Oliver testified that he would have expected the Appellant's tax returns for 1996/1997 and 1997/1998 to include details of the interest which had been earned on the Isle of Man bank account. He testified that the fact that four lodgements to that account were made by the Appellant by way of drafts made out to the Appellant indicated to him that the interest earned belonged to the Appellant and should have been declared in his tax returns.

35. Asked about the directorships which the Respondent believed ought to have been disclosed in the Appellant's tax returns for the two years, Mr Oliver named [REDACTED] Limited and [REDACTED] Limited. He named two other companies of which the Appellant had been a director but accepted that these were incorporated after the periods to which the tax returns related, and therefore could not have been disclosed.

36. Mr Walsh also gave evidence on behalf of the Respondent. He gave evidence in relation to his initial letter of enquiry sent by him on the 14th of May 2010, the response he received from the Appellant's agents and explained why he



had written on the 14th of June 2010 to say that he was treating the matter as closed.

37.When asked why he had then recommenced his enquiries by his letter of the 9th of August 2012, Mr Walsh stated as follows:-

“The information we were getting from the banks was over a consistent period of time and different tranches of information were coming in all the time. A new tranche of information would have come in perhaps from AIB showing another transfer from this jurisdiction to the Isle of Man and a closer examination of that would have shown that the person making the lodgement to the Isle of Man was in fact Mr [REDACTED] so going back and then looking at our file on Mr [REDACTED], the explanation was that these funds were Mr [REDACTED]’s funds. I then said “On what basis would Mr [REDACTED] be making transfers to his brother’s account if all the funds in the account were beneficially owned by his brother?” So on that basis I sought an explanation for the transfers of drafts made out to Mr [REDACTED] to an account in the Isle of Man.”

38.When asked if he had any reason to believe that the returns of income which the Appellant had made in respect of 1996/1997 and 1997/1998 might have been negligently or fraudulently completed, Mr Walsh stated:-

“The explanation that was given to me was that the funds in the Isle of Man were not Mr [REDACTED]’s, therefore Mr [REDACTED] would not have included any income earned on those funds in his return. There was no necessity then for me to examine his returns because the explanation that had been provided was that these were not the funds of Mr [REDACTED]. Therefore I had no reason to go back and examine these returns.





The explanation had been that these were not his funds, therefore they would not have been included in these returns."

39. Mr Walsh was asked whether the fact that there was no disclosure of any offshore accounts having been opened in the name of the Appellant or any return of earnings from offshore accounts in the years in question were matters which in his mind might have indicated that the Appellant had negligently completed his earlier tax returns. Mr Walsh replied that:

"Yes, it would have. I had considerable doubt as to the explanation being provided and therefore if these were in fact Mr [REDACTED]'s accounts, then he had made negligent returns."

40. Mr Walsh testified that the subsequent information furnished on behalf of the Appellant on a without prejudice basis did not satisfy him as to what he felt were possible inadequacies in the income tax returns made by the Appellant. He felt that he had still not received a good explanation as to why the amounts were going out in the Appellant's name rather than in his brother's name. This remained the case up to the time that he passed the file on to Mr Oliver.

41. In cross-examination, Mr Walsh said that he had no reason to doubt the information which had been given to him by the Appellant's agents in May of 2010 and this was why he had written his letter of the 14th of June 2010.

42. Mr Walsh accepted that, while new information was being received by the Respondent in relation to offshore transactions on an ongoing basis, and he did not have a specific recollection as to when the information relevant to this appeal was received, it was likely that the Offshore Assets Group had received from AIB all the details relating to the four Notified Bank Transactions by the





5th of March 2009. If that was the case, he accepted that he had received no new information between the 14th of June 2010 and the 9th of August 2012. Instead, the information received had been reviewed and it had been noted that the person making substantial transfers to the Isle of Man was in fact the Appellant and that had called into question the original explanation given by the Appellant's agents.

43. Mr Walsh testified that the original explanation given by the Appellant's agents was that the Appellant had been acting in a fiduciary capacity. He said that he did not understand why the bank drafts were not made out in the name of the Appellant's brother if the Appellant's brother was in fact the beneficial owner of the funds. He therefore had a reasonable doubt and a strong suspicion that the returns were incorrect. He said he believed it was extremely unlikely, and only a remote possibility, that the funds had been lodged to the Isle of Man account by a third party and not by the Appellant.

44. Mr Walsh said that he did not recall the failure to disclose the opening of the Isle of Man account in the Appellant's 1996/1997 and 1997/1998 returns as being a factor in his decision to recommence the investigation, and he did not recall reviewing the IT38 return or the memorandum which accompanied it. Equally, he did not recall the timing of the submission of the IT38 return as being something he had regard to when he issued his letter on the 9th of August 2012.

E. Submissions made on behalf of the Respondent



45. The Respondent's written submissions referred me to the provisions of section 956 and submitted that the issue before me was whether "*the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner*". The Respondent submitted that it did not have to prove either fraud or negligence; rather, the Inspector simply has to satisfy me that he had reasonable grounds for believing that the return submitted was completed in a fraudulent or negligent manner.

46. At the hearing before me, Counsel for the Respondent referred me in this regard to the decision of Charleton J in ***Menolly Homes Ltd -v- The Appeal Commissioners [2010] IEHC 49***. In that case, the Court had to consider section 23(1) of the Value Added Tax Act 1972 which empowers an inspector of taxes to assess tax where he or she "*has reason to believe that an amount of tax is due*." Charleton J observed that in using the word "*believe*" as opposed to words such as "*conclude*" or "*suspect*", a very wide form of jurisdiction was implied. Having considered the decision of Henchy J in ***Hanlon -v- Fleming [1981] I.R. 489***, Charleton J went on to state in paragraph 29 as follows:-

"The Oireachtas did not use the phrase "reason to conclude" in the legislation. A conclusion is at a higher level of certainty than a belief. If I were required to put states of mind commonly used in law as defining liability or for allowing administrative action in descending order of certainty, they would be, from the top rung, to know; to conclude beyond reasonable doubt; to conclude as probable; to reasonably suspect; and I would tend to put mere suspicion and mere belief, without the element of legally required reasonableness, on the same level at the lowest rung. Modern legislation tends not to use those bare concepts of belief or



suspicion; instead legislation may refer to someone knowing or believing in respect of criminal liability, such as in handling stolen property believing it was probably stolen or dealing in the proceeds of crime with a similar mental element, and in administrative statutes the wording tends to revolve around conclusions or beliefs based on some reason or on suspicion reasonably arising. In any event, unreasonable actions or decisions, that is those that fly in the face of fundamental common sense, exceed jurisdiction either on a quasi-judicial or an administrative level. I note that the Concise Oxford English dictionary (10th edition, 2002) says of conclude that it means to “arrive at a judgement or opinion by reasoning”. In using the lesser phrase of “reason to believe”, it is clear that the approach of the tax inspector cannot be based upon telepathy or a mere hunch unrelated to any basis upon which a reasonable person might thereby come “to believe that an amount of tax is due and payable” by the taxpayer. The same dictionary defines reason as a “cause, explanation or justification.” Thus, the tax inspector must have a cause, an explanation or a justification to believe, not conclude, not to know, that an amount of tax is due. He or she does not have to form a concluded belief in that regard, much less a final conclusion or to arrive at a state of knowledge about the fact that tax is due. What is required is that any tax inspector should act only where their belief is backed up by reason. In attempting to describe the notion of having a reason to believe something, the exclusion of its opposite of caprice goes some way towards assisting in the definition. Simple words are ordinary because they carry a meaning. We can understand words both for what they are, and for what they are not. In raising an assessment on the taxpayer for an amount of VAT, any notion of mere belief is ruled out.”



47.The Respondent submitted that it was limited in the facts available as the Appellant had invoked section 956(1) and thereafter refused to furnish any further relevant facts. Accordingly, the Respondent sought to rely on the following facts which were available to the Inspector:-

(a) This matter involved four lodgements by way of demand drafts with the Appellant named as payee on all four drafts. The lodgements concerned were made on the 28th of November 1996, the 29th of November 1996, the 2nd of January 1997 and the 30th of December 1997, and totalled IR£294,072.

(b) The offshore account in question was held in the name of the Appellant, his wife [REDACTED] and his late brother [REDACTED].

(c) Pursuant to section 895(6) of the TCA 1997, the Appellant, who was jointly assessed with his wife, was required to provide certain particulars to Revenue in relation to any foreign account opened directly or indirectly by him or his wife as part of his income tax returns.

(d) The Appellant was a chargeable person during the relevant years but failed to comply with the provisions of section 895(6) and in this regard the Respondent referred me to the Form 12 returns filed by the Appellant in respect of income tax years ending 5th April 1997 and 5th April 1998. In each of these returns, the Appellant was requested to furnish details of any foreign bank account opened in that year and of any deposit interest earned, and in respect of each of the relevant years the Appellant answered "Nil".

48.The Respondent submitted that the Appellant's failure to furnish details of his said foreign bank account and the interest earned thereon was negligent and/or fraudulent in the context of section 956(1)(c).



- 49.** The Respondent said that the Appellant was likely to claim that he had no beneficial interest in the account but the Respondent had no reason to believe this assertion by the Appellant. The Respondent emphasised that the Appellant was the payee for large sums lodged into the Isle of Man account and that this account was jointly owned by the Appellant, his wife and his brother.
- 50.** The Respondent further submitted that I should be conscious of the timing of matters, and in particular the filing of the inheritance tax return by the Appellant some five years after the death of the Appellant's brother, which coincided with the commencement of the Respondent's enquiries.
- 51.** The Respondent submitted that, in all the circumstances, the inspector had reasonable grounds for believing that the said income tax returns submitted by the Appellant were insufficient due to their having been completed in a fraudulent and/or negligent manner and ought therefore to be permitted to continue with his enquiries pursuant to section 956(2)(c)(ii).
- 52.** The Respondent further submitted that I should have regard to the fact that there are other safeguards for the Appellant in terms of the time limits provided for in the Taxes Acts regarding the making of assessments, and in particular as provided for by section 955 TCA. If I acceded to the Inspector's request and allowed further enquiries then, if arising therefrom amended assessments were raised upon the Appellant, there was a further safeguard open to the Appellant in terms of the time limits provided for in section 955, which provides that amended assessments cannot be raised outside of the four year time limit unless the income tax returns filed did not make a full and true disclosure of all material facts.



53. The Respondent made reference to these additional safeguards so as to emphasise that I ought only to concern myself with whether there were “*reasonable grounds*” for the Inspector’s belief, and not with whether there was negligence or fraud in the completion of the income tax returns.
54. In relation to the Appellant’s explanation that he was not the beneficial owner of the Isle of Man account, the Respondent submitted that there was no obligation on the Inspector to accept the explanation given by the Appellant. Rather, the question was whether the Inspector had “*reasonable grounds for believing*” that explanation, having regard to all of the information available to him.
55. The Respondent accepted that section 895(6) only required the disclosure of details of a foreign bank account in the year in which that account was opened. However, the Respondent had not become aware of the year in which the foreign bank account was opened until receipt of the Appellant’s written submissions in the appeal. According to the Appellant’s said submissions, the Isle of Man account was opened on the [REDACTED] 1991. The Respondent submitted that under section 895(6), the Appellant became a chargeable person in 1991 as a consequence of having opened the bank account, yet he had failed to disclose same in his return for that year. Furthermore, there was an ongoing obligation on the part of the Appellant to disclose on an annual basis his earnings on the said foreign bank account, which he failed to do.
56. In response to the Appellant’s submission that the Respondent had not disputed that the entire proceeds of the account were a gift to the Appellant from his brother, the Respondent submitted that this was incorrect and



otherwise the Respondent would not have made its enquiries which had given rise to the appeal.

57. The Respondent also disagreed with the Appellant's contention that the timing of the inheritance return was irrelevant. The Respondent submitted that I should have regard to the fact that Mr. [REDACTED] had died on the [REDACTED] [REDACTED] 2005, over five years prior to the date of the inheritance tax return, yet the alleged inheritance consisted solely of the said foreign bank account in the amount of €1,609,420.00. Furthermore, the inheritance tax return was filed a fortnight after the Respondent's enquiry letter.

58. Counsel for the Respondent also submitted at the hearing before me that the evidence of Mr Walsh made it clear that the requirements of section 956 had been satisfied at the time of the initial enquiry in August 2012. However, he submitted that it was also clear from the correspondence that the enquiry was an ongoing enquiry and that I therefore did not have to confine myself to consideration of the inspector's state of mind in 2012. He submitted that I should also have regard to the matters that were in the mind of Mr Oliver at the times when he corresponded with the Appellant's agents.

59. Counsel for the Respondent further submitted at the hearing that the Appellant had not exercised his right of appeal under section 956(2)(a) prior to October 2014. He submitted that "*there was a suggestion that they invoked it, but they actually didn't do that*" until the letter of the 21st of October 2014 expressly invoked section 956(2)(b). He therefore submitted that I could have regard to all of the information which was in the minds of the two Revenue Officers up to that date.



60. Counsel submitted that having regard to the fact that the payments were made in [REDACTED], close to where the Appellant was living, the fact that the Appellant was the payee of the monies, the fact that the Appellant was the joint owner of the Isle of Man bank account and the fact that there was no previous disclosure of his having had an interest in any foreign bank account, were all reasons for the Respondent's officers to have had a cause, an explanation and a justification to believe that he had not made a proper disclosure of his earnings during the two years relevant to the appeals.

61. He emphasised that there was no need for the inspectors to have reached any form of conclusion. Instead, he submitted that the test was whether, from a common sense and a reasonable person's perspective, there was on the balance of probabilities enough information for the Inspectors to have reasonably come to a belief that the Appellant had not made a proper disclosure of his earnings.

62. Counsel further submitted that in addition to the foregoing factors, Mr Oliver had also had regard to the fact that the Form 12 returns submitted by the Appellant had not disclosed any foreign bank accounts. The High Court Order pursuant to which the Notified Bank Transactions were disclosed had directed that any amounts or lodgements from 1992 onwards be disclosed, yet there was no disclosure of any earlier lodgement into the account. For that reason, Counsel submitted that it was reasonable for the Inspector to believe that the account had been opened as of the date of the initial lodgement. While the Appellant's written submissions had indicated that the account was opened in 1991, Counsel submitted that there was no evidence to support this assertion and, in any event, this was not information which had been available to Mr Walsh or Mr Oliver at the time that they were making their enquiries.



F. Submissions of the Appellant

63. The Appellant submitted that the Respondent was not entitled to make the enquiry it did on the 9th of August 2012 relating to the income of the Appellant for the tax years ending the 5th of April 1997 and the 5th of April 1998 as the enquiry was made outside the period of four years within which such enquiries can be made. The Respondent had such evidence from the Appellant available to it on the 9th of August 2012 and on the 14th of June 2010 that it was not reasonable for the Respondent to believe that the returns filed by the Appellant for the two tax years were completed in a fraudulent or negligent manner.

64. Counsel for the Appellant emphasised the words “*at that time*” in section 956(1)(c) and submitted that I should only have regard to the state of mind of the Inspector as of the 9th of August 2012, which was when the enquiry under appeal had commenced. She submitted that any subsequent actions or beliefs of Mr Walsh were entirely irrelevant, as were the thoughts, beliefs or suspicions of Mr Oliver. She further submitted that, because a protective appeal had been made on the 7th of September 2012, it was clear from the wording of section 956(2) that no further enquiries could be made or actions taken pending the determination of the appeal.

65. The Appellant submitted that it was clear from the wording of section 895(6) that the obligation to disclose the opening of a foreign bank account only applies in the year in which the account is opened. The Appellant submitted that the account was in existence on the [REDACTED] 1991 and therefore



was not opened during the income tax years ending the 5th of April 1997 and the 5th of April 1998. Accordingly, the Appellant was not obliged to disclose the opening of a foreign bank account in the returns for those years and was not negligent in failing to do so.

66. Insofar as the Respondent relied on the alleged failure by the Appellant to return deposit interest earned from the account for two income tax years, the Appellant submitted that there was no evidence that the Appellant received foreign deposit income for the years in question.

67. The Appellant further submitted that the Inspector could not have had any reasonable grounds for believing that the Appellant had foreign deposit income for the two income tax years at the time of making the enquiry on 9th August 2012 because:-

(a) The Appellant had submitted a signed declaration from his brother [REDACTED] dated the 25th of March 2004 which stated that [REDACTED] was the beneficial owner of the account with AIB in the Isle of Man and accordingly any deposit interest earned on the account was the income of [REDACTED] and not the Appellant. Furthermore, the monies paid in by the four bank drafts did not belong to the Appellant;

(b) The Appellant had declared the entire proceeds of the account in the Isle of Man as a gift from his brother for CAT purposes and had made a significant payment of €320,495 to the Respondent in respect of his CAT liability;

(c) The Respondent had not disputed that the entire proceeds of the account in the Isle of Man was inherited by the Appellant from his brother; and,





(d) All of this information was available to the Respondent on the 14th of June 2010 when the Respondent informed the Appellant's agents that *"Based on the information supplied by you, I am treating the above matter as closed."*

68. The Appellant submitted that the said letter clearly indicated that the Respondent was satisfied with the information provided by the Appellant. The Appellant submitted that the Respondent appeared to have received no additional information after the closing of its inquiry on the 14th of June 2010 which might have enabled Mr Walsh to establish on the 9th of August 2012 that he had reasonable grounds for believing that the returns filed by the Appellant for the two relevant tax years were completed in a fraudulent or negligent manner.

69. In light of the foregoing, the Appellant submitted that the Inspector could not have had reasonable grounds for believing that the Appellant's returns for the relevant periods were negligent for failing to include foreign deposit income alleged to have been earned by the Appellant.

70. The Appellant further submitted that it was entirely irrelevant to the issue before me to consider whether or not section 955 of TCA 1997 would provide additional safeguards to the Appellant in the event that I refused the appeal and the Respondent subsequently raised an amended assessment. He submitted that section 956 was an entirely self-contained provision and that I had no jurisdiction to consider any other factor outside those detailed in the section.



71. The Appellant further submitted that it would be incorrect for me to take into account the timing of the inheritance tax filing, and the Respondent's implicit suggestion that the Appellant only made this return following the raising of enquiries by the Respondent. It was submitted that the Appellant's solicitors had been liaising with solicitors in the Isle of Man as early as October 2009 regarding the requirements for the extraction of a grant of representation in the Isle of Man, and whether this was necessary, following the death of the Appellant's brother. This process had taken some time and it was for this reason that the IT38 was not filed until May of 2010. The Appellant submitted that it was clear that the Appellant's solicitor had been dealing with this matter for more than six months before the initial enquiry letter of the 14th May 2010. Counsel for the Appellant further pointed out that Mr Walsh had accepted in his cross-examination that he had not had regard to the timing of the IT38 return.

G. Analysis and Findings

72. It was common case between the parties to the appeal that the key legislative provision which governs the issue to be decided is section 956(1)(c). Both legal representatives agreed that the appeal should be allowed unless I was satisfied that "*at that time* [being the time of the enquiry sought to be appealed] *the inspector* [had] *reasonable grounds for believing that the* [Form 12 returns for 1997 and 1998 were] *insufficient due to* [their] *having been completed in a fraudulent or negligent manner.*"

73. I agree with Counsel for the Appellant that this is a self-contained test, and I have not had regard to any additional safeguards which may or may not be





available to the Appellant pursuant to section 955 in the event that he does not succeed in this appeal.

74. Accordingly, the first question which I must determine is the date of the enquiry which is being appealed. This is a necessary prerequisite to my forming a view as to the state of mind of the inspector "*at that time.*"

75. It is clear that an initial enquiry was made by Mr Walsh in May of 2010. It is equally clear that this enquiry was responded to by the Appellant's agents (without their making any objection to the Respondent's right to make the enquiry) and that this response was, at least at that time, considered satisfactory by the Respondent. The letter from Mr Walsh of the 14th of June 2010 stated clearly and unambiguously that the enquiry was being treated as closed.

76. I am satisfied that Mr Walsh's letter of the 9th of August 2012 constituted a new enquiry for the purposes of section 956. The response from the Appellant's agents was to make a protective appeal pursuant to section 956(2), and this was made within the 30-day period allowed by the statute. It is absolutely clear from the correspondence that all of the information furnished by the Appellant's agents subsequent to the 7th of September 2012 was furnished on a without prejudice basis.

77. I cannot accept as correct the submission by Counsel for the Respondent that there was in some way a failure by the Appellant to properly or fully invoke his appeal rights pursuant to section 956(2), or that the subsequent correspondence operated to void or detract from his exercise of the right to appeal against the making of the enquiry. I agree with Counsel for the Appellant that once there had been a valid exercise of the right of appeal on





the 7th of September 2012, the provisions of section 956(2)(b) meant that the Respondent could not oblige the Appellant to take any further action on foot of the enquiry pending the determination of the appeal.

78. I further note in this regard that Mr Oliver accepted in cross-examination that it was Mr Walsh's letter of the 9th of August 2012 which commenced the enquiry and that his subsequent letter dated the 11th of September 2012 simply expanded on that initial enquiry.

79. Accordingly, I am satisfied that the enquiry under appeal is that commenced by Mr Walsh's letter of the 9th of August 2012. It follows that in determining this appeal, I must have regard to the state of mind of Mr Walsh as of that date.

80. While I found Mr Oliver to be a candid and truthful witness, I agree with Counsel for the Appellant that he could not give evidence as to Mr Walsh's state of mind on any date, and I further agree that his evidence in relation to the information and factors which he considered after taking over the conduct of the enquiry and his evidence in relation to the beliefs he formed as a result thereof are not relevant to the question I have to decide.

81. Accordingly, in deciding this appeal, I have confined myself to a consideration of the evidence given by Mr Walsh, as well as the documents, information and explanations available to him when he commenced his enquiry on the 9th of August 2012.

82. Turning to the evidence of Mr Walsh, I equally found him to be a candid and truthful witness. He readily accepted that, as a result of the passage of time and as a consequence of the very high number of enquiries he was pursuing as





part of the Offshore Assets Project, that he did not have a perfect recall of all of his dealings in relation to the Appellant.

- 83.** He further accepted in cross-examination that he could not recall having in mind any possible failure by the Appellant to comply with the provisions of section 895(6) at the time he commenced the enquiry under appeal, nor could he recall having had any regard to the timing of the IT38 return.
- 84.** He also fairly accepted that it was at least possible, if not likely, that no additional information in relation to the Appellant had been received by him between June of 2010 and August of 2012.
- 85.** However, I do not accept as correct the submission by Counsel for the Appellant that the fact that Mr Walsh accepted in June of 2010 the information and explanation offered by the Appellant's agents in relation to the Isle of Man account, and the fact that no additional information may have been received prior to his commencing a new enquiry in August of 2012, mean that he could not have had reasonable grounds for believing at the latter time that the Appellant's returns for 1997 and 1998 were insufficient.
- 86.** The wording of section 956(1)(c) does not, in my view, preclude an inspector from having such reasonable grounds based on a reconsideration or a further analysis of information and explanations which had not previously given rise to doubt or concern. It is the inspector's state of mind at the time that the enquiry is made which is of relevance, and the fact that the inspector may previously have formed a different view or had a different belief does not prevent him or her from subsequently reaching a different conclusion.



87.I accept as correct Mr Walsh's evidence that the information supplied on behalf of the Appellant in 2010 was reviewed at some point subsequent to June of 2010 and that on that later review he formed the view that the explanation given by the Appellant was not credible or satisfactory because the Appellant was the payee named on the four bank drafts lodged to the Isle of Man account.

88.When asked whether the fact that there was no disclosure of any offshore accounts having been opened in the name of the Appellant or any return of earnings from offshore accounts in the years in question were matters which in his mind might have indicated that the Appellant had negligently completed his earlier tax returns, Mr Walsh replied that:

"Yes, it would have. I had considerable doubt as to the explanation being provided and therefore if these were in fact Mr [REDACTED]'s accounts, then he had made negligent returns."

89.I accept Mr Walsh's evidence in this regard. Having carefully considered all of his testimony, I am satisfied and find as a material fact that at the time of his commencing the enquiry on the 9th of August 2012, he did not believe the explanation offered on behalf of the Appellant in relation to the source and/or ownership of the monies lodged to the Isle of Man account. Given that he did not believe the Appellant's explanation in relation to these monies, it followed ineluctably that he believed that the Appellant's tax returns for 1997 and 1998 were insufficient because of their failure to return these monies and/or because of their failure to return interest earned by the Isle of Man account.

90.I accept that Mr Walsh believed that the returns were insufficient and so I must next consider whether he had reasonable grounds for that belief.



91. I agree with Counsel for the Respondent that the decision of Charleton J in *Menolly Homes* is of assistance in deciding this issue. I have had careful regard to the fact that the Court was considering a different legislative provision in that case and that consequently a significant degree of caution must be exercised when considering the extent to which his judgement is of relevance to the instant appeal. Nonetheless, I do believe that his judgement does provide some guidance and assistance as to what might or might not constitute “*reasonable grounds for believing.*”

92. I respectfully agree with Charleton J that in order to satisfy this test, the inspector must have a cause or an explanation or justification to believe that a return is insufficient, but the statutory test falls short of requiring the inspector to have formed a concluded belief or a final conclusion or to have arrived at a state of knowledge about the fact that the return is insufficient.

93. Mr Walsh’s evidence was that the reason for his belief as to the insufficiency of the returns was that the four bank drafts lodged to the Isle of Man account were payable to the Appellant and not to his brother. He was of the view that if [REDACTED] was indeed the beneficial owner of those funds, the bank drafts would have been made out to him. He further believed that it was extremely unlikely that the bank drafts were lodged to the Isle of Man account by a third party and not by the Appellant.

94. Having carefully considered the foregoing evidence of Mr Walsh, I am satisfied and find as a material fact that there was a cause or an explanation for his belief that the returns were insufficient, and that he did not make his enquiry as a result of a mere suspicion or hunch or an unsupported belief or a caprice on his part.



95. I therefore find that at the time of his making the enquiry under appeal on the 9th of August 2012, Mr Walsh had reasonable grounds for believing that the Form 12 returns made on behalf of the Appellant for the 1997 and 1998 tax years were insufficient due to their having been completed in a negligent manner.

96. He was therefore not precluded from making the enquiry by reason of section 956(1)(c).

H. Determination

97. My findings above can be summarised as follows:-

- (a) The enquiry the subject matter of this appeal is that made by Mr Paul Walsh on behalf of the Respondent on the 9th of August 2012.
- (b) In deciding whether the requirements of section 956(1)(c) are satisfied, I can only have regard to Mr Walsh's state of mind as of that date, and any information or explanations which came to the attention of or were considered by the Respondent subsequent to that date are irrelevant.
- (c) As of that date, Mr Walsh believed that the Form 12 returns submitted on behalf of the Appellant for the 1997 and 1998 tax years were insufficient.
- (d) Mr Walsh had reasonable grounds for believing, within the meaning of section 956(1)(c), that the said returns were insufficient.





(e) Mr Walsh was therefore not precluded from making the enquiry by reason of section 956(1)(c).

98. It is important for me to emphasise that the foregoing findings are not, and should not be taken to be, findings in relation to the validity or otherwise of the information and explanations given by and on behalf of the Appellant in relation to the Isle of Man account. I make no findings in that regard, and this determination is solely related to Mr Walsh's state of mind as of the 9th of August 2012.

99. For the reasons set forth above, I find that the Appellant has not succeeded in his appeal and I therefore determine pursuant to section 956(2)(c)(ii) that it is lawful for the Respondent to continue with its enquiry.

MARK O'MAHONY
APPEAL COMMISSIONER
5 March 2021

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

