AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

90TACD2024

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This is an appeal pursuant to section 159A(1A) of the Stamp Duties Consolidation Act 1999 ("SDCA 1999") to the Tax Appeals Commission ("the Commission") against the refusal by the Revenue Commissioners ("the Respondent") to grant an application from [redacted] ("the Appellant") to return stamp duty in the amount of €673,056 following rescission of an agreement. The application was refused on the basis that the application was made out of time.

2. The net question at issue in this determination is whether the provisions of section 31B(3) of the SDCA 1999 are subject to the four-year time limit prescribed by section 159A of the SDCA 1999.

3. The appeal proceeded by way of a hearing on 17 April 2024.

Background

4. In [redacted] the Appellant entered into an Acquisition and Profit-Sharing Agreement ("APS Agreement") with other entities regarding the proposed development of land in, *inter alia*, [redacted]

5. On [redacted] 2018, a stamp duty return was filed on behalf of the Appellant and stamp duty of €673,056 was paid to the Respondent on foot of the APS Agreement and in accordance with section 31B of the SDCA 1999.

6. The development of the site in [redacted] never commenced. On [redacted] the parties to the APS Agreement entered into an agreement to rescind the APS Agreement ("Rescission Agreement"). On 8 September 2022, the Appellant's agent sought the return from the Respondent of the stamp duty paid. The Respondent refused, on the basis that it was not satisfied that the APS Agreement had been fully rescinded.

7. On 2 May 2023, the Appellant's agent again sought the return of the stamp duty paid on foot of the APS Agreement. Its application was refused by the Respondent, on the basis that the claim was made outside of the four-year time limit prescribed by section 159A of the SDCA 1999.

8. On 21 July 2023, the Appellant appealed to the Commission against the Respondent's refusal to return the stamp duty. The appeal proceeded by way of an oral hearing on 17 April 2024. Both parties were represented by their solicitors and counsel.

Legislation and Guidelines

9. Section 31B of the SDCA 1999 states that

> "*(1) In this section "development", in relation to any land, means –*
>
> *(a) the construction, demolition, extension, alteration or reconstruction of any building on the land, or*
>
> *(b) any engineering or other operation in, on, over or under the land to adapt it for materially altered use.*
>
> *(2) Where –*
>
> *(a) the holder of an estate or interest in land in the State enters into an agreement with another person under which that other person, or a nominee of that other person, is entitled to enter onto the land to carry out development on that land, and*
>
> *(b) by virtue of the agreement, otherwise than as consideration for the sale of all or part of the estate or interest in the land, the holder of the estate or interest in the land receives at any time a payment which amounts to, or as the case may be payments which together amount to, 25 per cent or more of the market value of the land concerned,*
>
> *then within 30 days of the first such time, the agreement shall be chargeable with the same stamp duty, to be paid by that other person, as if it were a conveyance or transfer of the estate or interest in the land.*
>
> *(3) The stamp duty paid on any agreement, in accordance with subsection (2), shall be returned where it is shown to the satisfaction of the Commissioners that the agreement has been rescinded or annulled*."

10. Section 159A of the SDCA 1999, at the relevant time for the purposes of this appeal, stated that

> "*(1) Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the transfer order referred to in section 78B was entered or the date the person achieves the standard within the meaning of section 81AA(11)(a).*

(1A) Any person aggrieved by a decision of the Commissioners on a claim for repayment, within the meaning of section 159B(1), may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision to that person.

(2) Subsection (1) shall not apply to a repayment claim in respect of stamp duty arising on or before the date of the passing of the Finance Act 2003, where a valid claim is made on or before 31 December 2004."

11. Section 159B of the SDCA 1999, at the relevant time for the purposes of this appeal, stated *inter alia* that

"*In this section –*

[…]

"repayment" means a repayment of stamp duty including a repayment of –

(a) any interest charged,

(b) any surcharge imposed,

(c) any penalty incurred,

under any provision of this Act in relation to stamp duty.

(2) No interest shall be payable in respect of a repayment claim made under any other provision of this Act unless such interest falls to be paid under this section.

[…]

(4) A claim for repayment under this section shall only be treated as a valid claim when –

(a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made.

and

(b) all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

[…]

(6) Except as provided for by this Act or section 941 of the Taxes Consolidation Act 1997 as it applies for the purposes of stamp duties, the Commissioners shall not repay an amount of duty paid to them or pay interest in respect of an amount of duty paid to them…"

Case Law

12. There have been a number of judgments of the superior courts in recent years concerning statutory interpretation that are relevant to this appeal.

13. In *Bookfinders Ltd v Revenue Commissioners* [2020] IESC 60 ("*Bookfinders*"), O'Donnell J stated *inter alia* that

> "*47 However, that should not be understood to mean that the interpretation of tax statutes cannot have regard to the purpose of the provision in particular, or that the manner in which the court must approach a taxation statute is to look solely at the words, with or without the aid of a dictionary, and on the basis of that conclude that, if another meaning is capable of being wrenched from the words taken alone, the provision must be treated as ambiguous, and the taxpayer given the benefit of the more beneficial reading. Such an approach can only greatly enhance the prospects of an interpretation which defeats the statutory objective, which is, generally speaking, the antithesis of statutory interpretation.*
>
> *[…]*
>
> *52 The task of statutory interpretation in any context is the ascertainment of meaning communicated in the highly formal context of legislation. But some degree of uncertainty or lack of clarity is almost inevitable, and the principles of statutory interpretation are designed to assist in achieving clarity of communication. As long ago as 1964, in C.K. Allen, Law in the Making, (Oxford: Oxford University Press, 7 th ed., 1964), the 7 th edition of a textbook which had spanned the golden age of strict literal interpretation, Professor C.K. Allen observed at p. 349 that:-*
>
> > *"common experience tells us that it is impossible to devise any combination of words, especially in the form (which all laws must take) of a wide generalisation, which is absolutely proof against doubt and ambiguity. So long as men can express their thoughts only by the highly imperfect instrument of words, an automatic, irrefragable certainty in the prescribed rules of social conduct is not to be attained".*

It is not, and never has been, correct to approach a statute as if the words were written on glass, without any context or background, and on the basis that, if on a superficial reading more than one meaning could be wrenched from those words, it must be determined to be ambiguous, and the more beneficial interpretation afforded to the taxpayer, however unlikely and implausible. The rule of strict construction is best described as a rule against doubtful penalisation. If, after the application of the general principles of statutory interpretation, it is not possible to say clearly that the Act applies to a particular situation, and if a narrower interpretation is possible, then effect must be given to that interpretation. As was observed in Kiernan, the words should then be construed "strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language".

[…]

54 … It means, in my view, that it is a mistake to come to a statute - even a taxation statute - seeking ambiguity. Rather, the purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the court is to seek to ascertain their meaning. The general principles of statutory interpretation are tools used to achieve a clear understanding of a statutory provision. It is only if, after that process has been concluded, a court is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text construed given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.

[…]

93 … But the fact that an Act could be expressed more clearly or that, thereby, more precise language could be used does not render it ambiguous, still less give rise to the principle against doubtful penalisation. The function of a court interpreting legislation is not the same as that of a pedantic school teacher correcting a student's English and perhaps inculcating an appreciation of the precise use of language: rather, the Court's function is to understand the provisions enacted by the legislature and give effect to them consistent with the principles of statutory interpretation and, in this case, the principle against doubtful penalisation."

14. In *Perrigo Pharma International Activity Company v McNamara* [2020] IEHC 552, McDonald J summarised the principles arising from the case law on statutory interpretation. At paragraph 74 he stated that

'*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

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

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

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

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

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

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

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the*

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

15. In *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43 ("*Heather Hill*"), the Supreme Court reiterated that the words of the statute should be given their ordinary and natural meaning, while being viewed in context. Murray J stated *inter alia* that

"*106 … The judgment of McKechnie J. in [Brown; Minister for Justice v Vilkas [2018] IESC 69] provides a good summary that is reflected in the other decisions: indeed, it was cited at some length and relied upon in the course of the judgment of the Court of Appeal in this case. The essential points he made were as follows:*

(i) The first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning (at paras. 92 and 93).

(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include ' the immediate context of the sentence within which the words are used; the other subsections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including … LRC or other reports; and perhaps … the mischief which the Act sought to remedy' (at para. 94).

(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language (see para. 92).

(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted (at para. 95).

107 On the specific issues in that case McKechnie J. dissented, but the basic proposition has been restated since: in his judgment (with which O'Donnell, MacMenamin, O'Malley and Finlay Geoghegan JJ. agreed) in Dunnes Stores (at paras. 64 to 66 – ' context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that'): and in Bookfinders (at para. 53, per O'Donnell J. approving paras. 62 to 72 of the judgment in Dunnes Stores and with whom Clarke C.J., MacMenamin, Charleton and O'Malley JJ. agreed): ' [a] literal approach should not descend into an obdurate resistance to the statutory object, disguised as adherence to grammatical precision' (at para. 56). Ambiguity will thus arise because on its face the text is clearly susceptible to more than one meaning, but it may also be contextual, so that seemingly clear words can, when placed in situation, bear a construction not always evident from the language alone: as McKechnie J. stated in his judgment in Vilkas (see paras. 85 to 87) (and with which Clarke C.J., O'Donnell, MacMenamin and O'Malley JJ. agreed) (' [c]onsideration of the context forms a part of the literal approach').

108 It is also to be noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose – it is now clear that these approaches are properly viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions – and in particular of Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed. Indeed McKechnie J. later suggested as much in Brown (at para. 95) (and see more recently O'Sullivan v. Ireland [2019] IESC 33, [2020] 1 IR 413, 443 per Charlton J.) and Dunnes Stores (' subject matter .. and the object in view … will inform the meaning of the words, phrases or provisions in question').

109 It is curious that, notwithstanding these decisions and statements, and despite the ubiquity of issues of statutory interpretation in modern litigation, both submissions of counsel and decisions of some courts show on occasion a dogged adherence to the refrain that a literal interpretation of a statutory provision is departed from so as to consider broader questions of statutory purpose and context only where the

construction yielded by that literal analysis is 'ambiguous or absurd'. That, in fact, was the proposition advanced by the applicant in this case. In part, this may be a consequence of a misunderstanding as to the effect of s. 5 of the Interpretation Act 2005, to which I will turn shortly. What, in fact, the modern authorities now make clear is that with or without the intervention of that provision, in no case can the process of ascertaining the 'legislative intent' or the 'will of the Oireachtas' be reduced to the reflexive rehearsal of the literal meaning of words, or the determination of the plain meaning of an individual section viewed in isolation from either the text of a statute as a whole or the context in which, and purpose for which, it was enacted.

[…]

112 … The debate reveals an obvious danger in broadening the approach to the interpretation of legislation in the way suggested by the more recent cases — that the line between the permissible admission of ' context' and identification of ' purpose', and the impermissible imposition on legislation of an outcome that appears reasonable or sensible to an individual judge or which aligns with his or her instinct as to what the legislators would have said had they considered the problem at hand, becomes blurred. In seeking to maintain the clarity of the distinction, there are four basic propositions that must be borne in mind.

113 First, 'legislative intent' as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in Crilly v. Farrington [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably attributed to a collective assembly whose members may act with differing intentions and objects.

114 Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see DPP v. Flanagan [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their

individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in McGrath v. McDermott [1988] IR 258, at p. 276).

115 Third, and to that end, the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

116 Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However — and in resolving this appeal this is the key and critical point — the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

16. Finally, in the recent judgment of the Court of Appeal in *Hanrahan v Revenue Commissioners* [2024] IECA 113, which was delivered after this appeal was heard, the court reaffirmed the principles enunciated in *Heather Hill*, and stated at paragraph 81 that

"*Murray J. went on to discuss s. 5 of the [Interpretation Act 2005] and noted that it had not featured in many of the recent judgments, possibly because those were concerned with provisions that were arguably penal in nature and thus excluded from the scheme. In this appeal, we are concerned with a penal provision and s. 5 does not apply to its interpretation. Nonetheless, as Murray J. noted, the decisions in Dunnes Stores, Bookfinders and Brown suggest that even when construing penal provisions all the contextual material can be consulted in construing such statutes*."

Submissions

Appellant

17. In written submissions, the Appellant stated that, in refusing to return the stamp duty to the Appellant, the Respondent had misinterpreted the provisions of the SDCA 1999. In particular, a return of stamp duty under section 31B could not be regarded as time-barred under section 159A as the latter expressly referred to the "repayment" of stamp duty and not its "return". Unless the provisions of section 159A applied from the date of rescission or annulment, they operated in an arbitrary or discriminatory manner, and the interpretation of section 159A contended for by the Respondent frustrated the intended purpose of section 31B.

18. It was instructive to note that section 76 of the Finance (No. 2) Act 2023 included amendments to two of the rescission provisions in the SDCA 1999, sections 31(4) and 50A(2). No amendments were made to section 31B(3), the subject of this appeal. The amendments stated that the two provisions were to be "*subject to section 159A*", and those words were the words missing from section 31B(3).

19. It was not for the Commission to cure the deficiency in the legislative provisions in this case; *Revenue Commissioners v Droog* [2016] IESC 55 ("*Droog*"). The plain meaning of the words used – giving each word a meaning – in context, and in light of the purpose of the legislative provisions, was key to interpreting the provisions of taxing statutes. In the case of section 31B(3), context and purpose were not difficult to discern. The immediate context for the right of return was the rescission or annulment of a development contract on which stamp duty was paid. The right created by subsection (3) was the right of return of that tax. The purpose was simple; to give effect to the rescission or annulment of a development contract by returning tax paid on that instrument.

20. The phrase "rescinded or annulled" within section 31B(3) was significant. It described two equivalences; where a contract no longer existed and all the legal incidences of the contract, as it was, were at an end. Moreover, the effect of rescission was to place the parties in the position that pertained before they entered into the contract. At the time of entry into the contract, the instrument was stampable. It was only after rescission took place, that the statutory right of return of stamp duty paid on the previously stampable instrument tax took effect.

21. In that regard, the words used in section 31B(3) were plainly deliberate and careful. Section 31B(3) specifically referred to stamp duty to be "returned". The right of return

arose upon and as a consequence of the rescission or annulment of the instrument which was initially subject to stamp duty. It could not arise otherwise. In such a scenario, stamp duty was not initially overpaid, or wrongly paid. This was distinct from a scenario where a tax had been overpaid at the outset, and was thus repayable from the date of its first return.

22. By contrast, by a return of stamp duty consequent on rescission and annulment, the accountable person should be returned to its pre-contractual position. Thus, the context of section 31B(3), and its purpose, were essentially the same. The context was the doctrine of rescission to which the subsection was plainly intended to give effect – that was also its purpose.

23. More simply, and perhaps more fundamentally, the right of return of stamp duty as expressed in section 31B(3) had only one condition attached; that was that the fact of rescission was established to the satisfaction of the Respondent. There were no words to indicate that section 31B(3) was subject to the provisions of section 159A. Consistent with the judgments in *Dunnes Stores v Revenue Commissioners* [2019] IESC 50 and *Droog*, those words could not be added or implied.

24. The phrase "*shall be returned*" was also found in other sections of the SDCA 1999, including sections 31(4), 31A(4) and 50A(2). The legislator had been clear and consistent in the use of the phrase "*shall be returned*" in SDCA 1999, and this use demonstrated a clear intention that such return provisions should be reflective of the doctrines of rescission and annulment. The phrases "*shall be returned*" as used in section 31B(3) and "*shall be repaid*" as found in section 159A(1) should not therefore be considered synonymous or identical.

25. If a time limit was to apply to returns of stamp duty to be made pursuant to section 31B(3), it was submitted that the time limits noted in section 159A must give effect to the intention that a return of tax could only ever arise by reference to the agreement rescinding or annulling the original stampable instrument (or part thereof). Unless that was the case, such time limits operated in an entirely arbitrary and discriminatory way, in extinguishing the right created by section 31B(3) in some cases, and not others. Such an intention nowhere appeared in the words used, or the scheme of the statutory provisions.

26. On 8 September 2022, in conjunction with the letter issued by the Appellant's agent to the Respondent making an application for a return of stamp duty, an amended return was made showing a total liability and return liability amount of €0.00 and associated credit in respect of stamp duty paid and therefore total balance of stamp duty outstanding of -

€673,056. A statement of liability issued reflecting the same figure of -€673,056. The provisions of section 159A provided that the time limit therein contained applied as follows: "*within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners...*" (emphasis added). If section 159A was to be applied to returns of stamp duty paid pursuant to section 31B, it was submitted that the statement of liability issued following submission of the amended stamp duty return of 8 September 2022 showing a total stamp duty liability of €0.00 and balance outstanding of -€673,056 constituted the statement of liability for the purposes of section 159A. If applicable, the four-year time limit would therefore run from the date of that amended return (rather than the date of the original APS Agreement).

27. In oral submissions, counsel stated that section 31B of the SDCA 1999 was an anti-avoidance provision, which applied stamp duty to agreements, such as the APS Agreement, where a developer was granted development rights and paid an amount in excess of 25% of the market value for the land. Section 31B(3) created a right of return of the stamp duty following rescission or annulment of the agreement, and did not say that the right was subject to section 159A or 159B. Therefore, in order to link it to those sections, it was necessary to write in or infer linking words.

28. The right of return of stamp duty was created and delineated in section 31B(3) and not anywhere else. Therefore, it was a vested right as soon as it was created. As stated in *Heather Hill,* there is a presumption against the truncation of a vested right unless clear language is used.

29. Section 31B(3) did not say "repay" or "refund"; it said "return". The use of "return" was deliberate. There was no reason to believe that the legislature used language that was careless or loose, but if they did, the words had to be construed with the principle against doubtful penalisation in mind.

30. The Respondent had argued that it was unlikely that the Oireachtas had created a right of return of stamp duty without any time limit. But Section 31B(3) required that it was necessary to show to the satisfaction of the Respondent that rescission or annulment had taken place. It was unlikely that a taxpayer would be able to show this decades later. The absence of a time limit was not illogical in the circumstances.

Respondent

31. In written submissions, the Respondent stated that section 159A applied to any claim for repayment of stamp duty (including any interest charged, any surcharge imposed or any penalty incurred under any provision of the SDCA 1999 in relation to stamp duty). The claim made by the Appellant pursuant to section 31B(3) was clearly a claim for repayment of stamp duty and the words "*shall be returned*", when considered in light of the principles of statutory interpretation, should be interpreted as such. As the claim for repayment was made outside of the four-year time limit provided by section 159A the repayment was refused.

32. What was in issue between the parties was the meaning of the word "*returned*" or the words "*shall be returned*" in section 31B(3). The words must be read in the context of the repayment of stamp duty already paid. From the outset, and contrary to what was asserted by the Appellant, the word "repay", by definition, was synonymous with the word "return", as confirmed by the Oxford English Dictionary. "Repay" was defined, *inter alia*, as "*pay back (money)*". "Return" was defined, *inter alia*, "*to come or go back, pay back or reciprocate*".

33. While the Appellant placed particular emphasis on the words "*shall be returned*" in section 31B(3), the words did not appear in isolation. The return of stamp duty did not happen in a vacuum. There was no automatic right to repayment of stamp duty. The taxpayer was required to make an application for the return of stamp duty to the Respondent and there had to be an evaluative process in respect of that claim in order to establish whether or not the taxpayer was entitled to have stamp duty returned.

34. On the Appellant's reading of section 31B(3) (i.e. that it had not made a claim for repayment) then on refusal of the repayment claim, there was no right of appeal under 159A(1A) or indeed any other provision of the SDCA 1999 as there was no general right of appeal under the Act. It could hardly be the intention of the legislature, in the context of the SDCA 1999 as a whole, that the legislation would create a situation where the Respondent could make a decision to refuse a repayment but would not afford the taxpayer the right to appeal that decision. It was submitted that what the Appellant contended for resulted in what O'Donnell J described in *Bookfinders* as "*an artificial reading of the words used to produce an unrealistic reading of the Act*".

35. There was nothing in the SDCA 1999 that prevented an accountable person being returned to its pre-contractual position. Stamp duty was a charge on instruments, not on transactions. The charge to stamp duty was not a contractual obligation between the

parties; it was a separate statutory obligation imposing tax on an instrument and had no bearing on the contractual obligations between the parties. It was therefore incorrect to suggest that the imposition of a statutory time limit for the repayment of any tax created a competing interest to contractual rights that might arise under the common law doctrines of rescission and annulment. It was clear from the judgment of the Court of Appeal in England and Wales in *Candy v HMRC* [2023] 1 WLR 1383 ("*Candy*") that there was no bar to a statutory time limit being applied in a claim for the repayment of Stamp Duty Land Tax where a contract was rescinded or annulled. Further, it was interesting to note that the word used in the relevant UK legislation was "repayment" and not "return" in the context of a rescinded or annulled contract, and therefore it was reasonable to submit that the meaning of the word "returned" in section 31B(3) did not have the meaning contended for by the Appellant in the context of a rescinded contract.

36. The intention of section 159B of the SDCA 1999 was to impose an absolute prohibition on the repayment of stamp duty, except where repayment was authorised by the SDCA 1999. Thus, in order to have a "*valid claim*", a taxpayer must bring itself within the ambit of what is permitted by specific provisions of the SDCA 1999. Section 159B defined what constituted a "*repayment*" and defines what constituted a "*valid claim*". In turn, section 159A made provision for a time limit within which a "*valid claim*" for "*repayment*" was made.

37. In oral submissions, counsel stated that it was clear that stamp duty was a tax on certain instruments and not the underlying transaction. She agreed with the Appellant's description of section 31B as an anti-avoidance provision, which dealt with resting-in-contract type arrangements concerning the development of land. Section 31B(3) was not a standalone provision – it related directly back to subsection (2). It could not be isolated from the rest of the SDCA 1999.

38. *Bookfinders* was a more appropriate authority in the context of this appeal than *Heather Hill*, because *Bookfinders* was concerned with the interpretation of words. *Bookfinders* was authority for the proposition that you interpret the meaning of words in a statute in the context of the statute as a whole. It was necessary to consider the meaning of "return" in the context of rescission. When read in light of section 31B as a whole, it was clear that "return" meant the repayment of stamp duty that had previously been paid over.

39. The Respondent was not asking the Commissioner to read words into section 31B. Section 31B could not be read in isolation. If "return" of stamp duty meant "repayment",

then it was automatically brought within the scope of section 159A, because section 159A dealt with any repayment under the SDCA 1999.

40. It was not clear on what grounds the Appellant claimed it had a vested right to return of the stamp duty paid by it. It had a statutory right as set out in section 31B(3), but this statutory right was subject to the time limit set out in section 159A. There was no need for linking words because the SDCA 1999 had to be read as a whole.

41. The Appellant had claimed in its written submissions that, if section 159A had to apply to section 31B(3), time should begin to run when the statement of liability was delivered to the Respondent. However, in this instance, the statement of liability of 8 September 2022 was delivered by the Respondent. That element of section 159A concerned capital companies capital duty; where a statement of assets and liabilities was required to be delivered to the Respondent, that statement became the instrument that was stamped. It was also relevant to a statement of liability prepared by banks in the context of cash withdrawals – however, these examples were very different to an instrument being stamped under self-assessment.

Material Facts

42. There was no substantive dispute between the parties on the material facts pertaining to this appeal, and there was no oral evidence proffered at the hearing. The parties had submitted an agreed Statement of Facts. Based on that Statement of Facts, as well as the submissions of the parties, the Commissioner makes the following findings of material facts:

    42.1. On [redacted] the Appellant entered into an Acquisition and Profit-Sharing Agreement ("APS Agreement") with other entities. Pursuant to the APS Agreement, the Appellant acquired development rights in respect of, *inter alia*, a site in [redacted]

    42.2. On [redacted] 2018, the Appellant paid stamp duty of €673,056, in respect of the [redacted] site, on foot of the APS Agreement and pursuant to section 31B of the SDCA 1999.

    42.3. The [redacted] site was not developed as had been envisaged by the APS Agreement. On [redacted] the parties to the APS Agreement entered into a further agreement in order to rescind the APS Agreement ("Rescission Agreement").

42.4. On 8 September 2022, the Appellant's agent sought a return of the stamp duty paid on [redacted] 2018. The Respondent refused, on the ground that it did not accept that the APS Agreement had been fully rescinded. While the Appellant did not agree with the Respondent, it stated that it would re-engage with the Respondent when further steps pursuant to the Rescission Agreement had been taken.

42.5. On 2 May 2023, the Appellant's agent again sought a return of the stamp duty paid on [redacted] 2018. The application was refused by the Respondent on the ground that the claim was made outside the four-year time period prescribed by section 159A of the SDCA 1999.

42.6. Following further engagement between the parties, on 21 July 2023, the Appellant appealed against the Respondent's refusal to return the stamp duty.

Analysis

Preliminary matters

43. Before turning to the substantive issue in this appeal, the Commissioner will briefly address two matters that arose in submissions but which he is satisfied are fundamentally not relevant for the determination of the appeal. Firstly, in their written submissions, the parties disagreed on whether the APS Agreement had been effectively rescinded, and in particular, the Appellant did not accept the Respondent's position, on foot of its first request on 8 September 2022 for a return of the stamp duty, that the APS Agreement had not been fully rescinded at that stage.

44. However, no appeal was brought by the Appellant to the Commission following the Respondent's refusal of that first request, and therefore the Commissioner is satisfied that he cannot consider whether the APS Agreement had been rescinded at that stage (and, in fairness, he did not understand the Appellant's position to be that he could or should consider that matter). At the hearing, the Respondent confirmed that it was not disputing that the APS Agreement had been fully rescinded by the time of the second request, on 2 May 2023, from the Appellant for a return of the stamp duty. Therefore, the Commissioner is satisfied that the question of whether or not the APS Agreement was properly rescinded, and/or when it was rescinded, does not arise for determination herein, as it is not in dispute that the APS Agreement had been rescinded by the time of the Respondent's refusal of the second request for a return of stamp duty, and it is that second refusal that is the subject of this appeal. In passing, the Commissioner notes that, while the Appellant maintained its position that the APS Agreement had been fully

rescinded by the time of its first request on 8 September 2022, the four-year period had already elapsed by that stage, and therefore, in respect of the question at issue in this appeal, the additional time between the refusals of the Appellant's first and second requests would not be material even if the refusal of the first request did fall to be considered.

45. The second matter is the argument that arose in the Respondent's submissions that, if the Appellant's submission that section 31B(3) is not subject to section 159A is correct, therefore no appeal lay from the Respondent's refusal of the Appellant's request, as the right of appeal against refusal of a repayment request is provided for by section 159A(1A), and that there is no general right of appeal in the SDCA 1999. In oral submissions, counsel for the Respondent confirmed that the Respondent was not contending that the appeal was invalid, but argued that the Appellant's argument was essentially inconsistent.

46. For the avoidance of doubt, and irrespective of the determination on the substantive matter, the Commissioner is satisfied that this is a valid appeal. In correspondence dated 16 June 2023 and again on 22 June 2023, the Respondent informed the Appellant's agent that it could appeal the refusal of its claim for a return, and subsequently no objection to the Commission accepting the appeal, pursuant to section 949L of the Taxes Consolidation Act 1997 as amended ("TCA 1997"), was received by the Commission. The Commissioner is further satisfied that the Appellant is entitled to argue that section 31B(3) of the SDCA 1999 is not subject to section 159A, irrespective of the possible implications of such argument for the availability of a right of appeal against a refusal of a request for a return of stamp duty under section 31B(3).

Substantive matter

47. In considering whether or not the Respondent was correct in refusing the Appellant's request for a return of stamp duty, the starting point is that the burden of proof rests on the Appellant, which must show that the Respondent's refusal of its request was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*"

48. The core issue is whether section 31B(3) of the SDCA 1999, which provides for the return of stamp duty where it is shown to the satisfaction of the Respondent that the relevant agreement has been rescinded or annulled, is subject to the four-year time limit for

reclaiming a repayment of stamp duty set out in section 159A(1) of the SDCA 1999. In considering this issue, it is necessary to apply the principles of statutory interpretation as enunciated by the superior courts, and as summarised in paragraphs 12 to 16 above.

49. Section 31B(3) of the SDCA 1999 states that

> "*The stamp duty paid on any agreement, in accordance with subsection (2), shall be returned where it is shown to the satisfaction of the Commissioners that the agreement has been rescinded or annulled.*"

50. Section 159A(1) of the SDCA 1999, at the relevant time, stated that

> "*Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the transfer order referred to in section 78B was entered or the date the person achieves the standard within the meaning of section 81AA(11)(a).*"

51. It seems to the Commissioner that there are two questions that must be considered by him in order to determine whether section 31B(3) is subject to section 159A. Firstly, should "shall be returned" in section 31B(3) be interpreted as synonymous with "shall be repaid" in section 159A; or more simply, is "return" synonymous with "repay"? Secondly, should the four-year time limit prescribed by section 159A be applied to a claim for a return of stamp duty under section 31B?

<u>First question</u>

52. Regarding the first question, the Appellant submitted that "return" was not synonymous with "repay", and that it was significant that the Oireachtas had not used the word "repay" or "repayment" in the context of the rescission or annulment of an agreement. In the context of rescission, stamp duty had not been initially overpaid or wrongly paid, and was thus distinguishable from a scenario where tax had been overpaid at the outset, and was therefore repayable from the date of its first return. The Respondent submitted that "repay" was synonymous with "return", and that it was significant that section 31B(3) concerned the stamp duty "*paid on any agreement*".

53. As stated by the superior courts, words of a statute must be given their "*ordinary and natural meaning*" while viewed in context. At first glance, it would appear significant that

the Oireachtas chose not to use the word "repay" in the context of rescission, which could suggest that the "return" of stamp duty should be regarded as qualitatively different from "repayment". However, the Commissioner agrees with the Respondent that the words "shall be returned" in section 31B(3) must be read in the context of the rest of section 31B(3), which states that

> "*The stamp duty paid on any agreement, in accordance with subsection (2), shall be returned where it is shown to the satisfaction of the Commissioners that the agreement has been rescinded or annulled.*" (emphasis added)

54. It seems to the Commissioner, therefore, that the subsection clearly provides for the return of stamp duty that had previously been paid by the taxpayer. It does not appear, therefore, that the concepts of "return" and "repayment" are qualitatively different; rather, it appears to the Commissioner that the "return" of stamp duty that was previously "paid" *is* synonymous with the "repayment" of that stamp duty.

55. In coming to this view, the Commissioner has had regard to the online edition of the Oxford English Dictionary, which defines the verb "repay" as *inter alia* "*To pay back (money, or its equivalent); to refund, return (a sum or amount owed)*" (emphasis added). Consequently, it does not appear to the Commissioner that there is any meaningful difference between "return" and "repay", such that the former should be understood to be excluded from the repayment provision set out in section 159A.

56. In its written submissions, the Appellant stated that the use of the word "shall be returned" by the Oireachtas in, *inter alia*, section 31B(3) was clearly intended to be reflective of the doctrines of rescission and annulment. While not explicitly stated so by the Appellant, the Commissioner understood its argument to be that the phrase "shall be returned" was akin to a term of art in the context of rescission. However, no authority was proffered or relied upon by the Appellant to substantiate the submission that "return" had a particular meaning or significance in the context of rescission.

57. On the other hand, the Respondent sought to rely upon the relatively recent English Court of Appeal judgment in *Candy v HMRC* [2023] 1 WLR 1383 ("*Candy*"), which considered whether a time limit on repayment of Stamp Duty Land Tax ("SDLT") in the context of the rescission of a contract applied. Simler LJ stated *inter alia* that

> "*50 Nor can I see any rational reason why Parliament would have wished to dispense altogether with the generally applicable time limit in paragraph 6(3), enabling taxpayers to make claims for repayment without any time limit, even decades later when memories may have faded and documents relating to the original land transaction may*

have been lost. There is nothing inconsistent in Parliament providing a right to reclaim tax paid as a safeguard for innocent taxpayers caught by the widely worded charge in section 44(4), but at the same time making that right subject to clear procedural rules, including time limits on the right to reclaim payment. It is of the essence of a self-assessment system that tax effects can be undone by administrative failure and merely meeting the substantive conditions for the grant of a relief is rarely enough to secure that a taxpayer receives the relief in question. Where the relief requires a claim, and the claim is not made in accordance with any procedural requirements, the taxpayer will not be given the relief.

51 Moreover, hard-edged time limits are a common feature of the self-assessment scheme. Where they govern the availability of a relief, they have the inevitable potential to cause hardship. In the case of section 44(9), a balance between the competing objectives of preventing tax avoidance on the one hand, and relieving innocent transactions caught by section 44(4) on the other, was clearly intended by Parliament. Since the longer the period of substantial performance lasts without completion of the contract, the more likely it is the purchaser will have obtained benefits under the contract in a way that justifies maintaining the SDLT charge, it was rational to strike that balance with a time limit of 13 months for amending the return from the effective date of the transaction giving rise to substantial performance (in other words, 12 months after the filing date). This limits the scope for avoidance but is simple to operate (for both HMRC and taxpayers). I can see no good reason why the unambiguous, hard-edged time limit in paragraph 6(3) should yield to section 44(9) as Mr Thomas contended. The consequence of Mr Thomas' construction is to dispense with certainty and finality in the sound administration of SDLT. That would be a surprising result."

58. The legislative provisions considered in *Candy* (section 44 of the Finance Act 2003) are different from section 31B of the SDCA 1999, and therefore the judgment is not directly applicable (and bearing in mind, of course, that English judgments are only of persuasive authority in any event). However, the Commissioner considers it relevant that (1) section 44(9) of the Finance Act 2003 refers to the "repayment" of SDLT following the rescission of a contract, and (2) the Court of Appeal found that it was not impermissible to have a time limit on repayment claims in the context of rescission.

59. Rescission is an equitable doctrine that arises under common law. Therefore, one would anticipate that, if the "return" rather than the "repayment" of stamp duty is effectively a term of art in the context of rescission, this would also be reflected in the relevant English legislation. However, section 44(9) of the Finance Act 2003 concerns the "repayment" of

stamp duty following rescission, and this use of the word "repayment" was not criticised or adversely commented on by the English Court of Appeal. Therefore, it appears to the Commissioner that there is nothing fundamentally incorrect in using the term "repay" rather than "return" in the context of rescission, and he considers that this supports his conclusion that "return" does not have a particular significance or meaning in this context. This further supports the conclusion that the phrase "shall be returned" in section 31B(3) of the SDCA 1999 is synonymous with "shall be repaid".

60. Furthermore, in its written submissions, the Appellant argued that the imposition of a time limit on the right to claim a return of stamp duty in the context of rescission would operate in "*an entirely arbitrary and discriminatory way*." While the judgment in *Candy* concerned the English legislation, which is different to the SDCA 1999, the Commissioner considers that it is authority for the proposition that there is nothing *in principle* impermissible with the imposition of a time limit on claims for repayment/return of stamp duty following the rescission of the contract. Furthermore, the Commissioner agrees with the Respondent that the charge to stamp duty is not a contractual obligation between the parties, but a separate statutory obligation imposing tax on an instrument. Therefore, while rescission provides for the parties being put back in their pre-contractual positions, it does not follow that this automatically includes the return of stamp duty.

61. Therefore, the Commissioner concludes that "shall be returned" in section 31B(3) of the SDCA 1999 is synonymous with "shall be repaid", and that there is no qualitative difference in this context between the use of "return" and "repay". In so finding, the Commissioner acknowledges that the use of "return" rather than "repay" might give rise to an apprehension that the Oireachtas intended that the "return" of stamp duty in the context of rescission should not be treated as synonymous with "repay", and he considers that the use of "repay" rather than "return" would therefore have been clearer. However, he notes the quote of O'Donnell J in *Bookfinders* that

> "*93 … But the fact that an Act could be expressed more clearly or that, thereby, more precise language could be used does not render it ambiguous, still less give rise to the principle against doubtful penalisation. The function of a court interpreting legislation is not the same as that of a pedantic school teacher correcting a student's English and perhaps inculcating an appreciation of the precise use of language: rather, the Court's function is to understand the provisions enacted by the legislature and give effect to them consistent with the principles of statutory interpretation and, in this case, the principle against doubtful penalisation*."

62. The Commissioner is satisfied that the mere use of "return" rather than "repay" is not sufficient to allow him to determine that there is a meaningful difference between the two words/phrases, and is further satisfied that the use of "shall be returned" in section 31B(3), when read in context and for the reasons set out above, should be understood as synonymous with "shall be repaid".

Second question

63. Having so found, the Commissioner will now consider whether the four-year time limit prescribed by section 159A should be applied to a claim for a return/repayment of stamp duty under section 31B. Counsel for the Appellant contended that, in the absence of express incorporation of the provisions of section 159A into section 31B(3), the Commissioner should not seek to read-in a time limit that acted to limit the "vested right" created by section 31B(3). Counsel for the Respondent stated in effect that if the Commissioner found that "return" was synonymous with "repay", it necessarily followed that section 31B(3) was subject to the time limit set out in section 159A(1).

64. Section 159A(1), at the relevant time, stated that

> "*Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the transfer order referred to in section 78B was entered or the date the person achieves the standard within the meaning of section 81AA(11)(a).*"

65. Firstly, the Commissioner notes that, while section 159A(1) is stated to be "*Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment*", there is no reference to any provision of the SDCA 1999 for making a claim for repayment containing a *longer* time limit, or *no* time limit at all. While this is not determinative, it is perhaps indicative that the Oireachtas did not envisage that repayment claims could be made after four years.

66. Secondly, section 159A(1) stipulates that a "valid claim" for repayment must be made within four years of the occurrence of certain stated events, and a "valid claim" is one "*within the meaning of section 159B*."

67. Section 159B(1), at the relevant time, defined "repayment" as

"*a repayment of stamp duty including a repayment of –*

(a) any interest charged,

(b) any surcharge imposed,

(c) any penalty incurred,

under any provision of this Act in relation to stamp duty." (emphasis added)

68. Section 159B(4) further provided that

"*A claim for repayment under this section shall only be treated as a valid claim when –*

(a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made…"

69. Therefore, it can be seen that section 159A(1) provided that no stamp duty would be repaid in respect of a valid claim, within the meaning of section 159B, unless that valid claim was made within four years of the occurrence of certain events. Section 159B(1) defined "repayment" as a repayment of stamp duty under any provision of the SDCA 1999, and section 159B(4) provided that a claim for repayment of stamp duty would only be treated as a valid claim if, *inter alia*, it was made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim was made.

70. While the above provisions are rather convoluted, the Commissioner is satisfied that the clear meaning of them is that any claim for a repayment of stamp duty under the SDCA 1999 must be made within four years of one of the specified events set out in section 159A(1). As he has already found that a claim for a return of stamp duty under section 31B(3) is synonymous with a claim for a repayment of stamp duty, it therefore necessarily follows that a claim for a return of stamp duty following the rescission of a contract must be made within four years of, *inter alia,* "*the date the instrument was stamped by the Commissioners*."

71. The Appellant submitted that, absent clear words incorporating the time limit into section 31B(3), the Commissioner could not find that the time limit did apply, as to do so would be to add words to the statute in the manner deprecated by the Supreme Court in *Revenue Commissioners v Droog* [2016] IESC 55. It was not for the Commission to cure the deficiency in the legislative provisions. While this could lead to anomalies, as Clarke J stated, "*There may very well be a problem. But it does not seem to me that that problem can legitimately lead to construing the legislation in a way which its wording does not allow*." Likewise, in *Dunnes Stores v Revenue Commissioners* [2019] IESC 50,

McKechnie J stated that "*… a court cannot speculate as to meaning and cannot import words that are not found in the statute, either expressly or by necessary inference*."

72. However, the Commissioner is satisfied that this is not what he is doing in this appeal. He is not importing "*words that are not found in the statute*"; rather, he is interpreting section 31B(3) of the SDCA 1999 in accordance with section 159A. In so doing, he is following and applying the *dictum* of Murray J in *Heather Hill*, wherein the judge stated that, when interpreting a statute, it must be borne in mind that:

> "*116 … the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole…*"

73. Consequently, the Commissioner is satisfied that section 31B(3) needs to be interpreted in the context of the SDCA 1999 as a whole, and he rejects the Appellant's submission that, absent express reference to the provisions of section 159A in section 31B(3), he cannot find that a time limit applies to a claim for a return of stamp duty.

74. In oral submissions, counsel for the Appellant described the right of return created by section 31B(3) as a "*vested right*" and stated that there was presumption against the truncation of a vested right unless clear language is used. The Commissioner is not satisfied that the Appellant adequately demonstrated that section 31B(3) created a vested right *per se*, and agrees with the Respondent that it is better described as a statutory right. In any event, he is satisfied that, when read in the context of the SDCA 1999 as a whole, the right created by section 31B(3), however described, is subject to the time limit prescribed by section 159A.

75. Ultimately, the Commissioner is satisfied that the Appellant's suggested interpretation of section 31B(3) is an artificial one, as it seeks to do what was cautioned against by O'Donnell J in *Bookfinders*, i.e., "*to approach a statute as if the words were written on glass, without any context or background, and on the basis that, if on a superficial reading more than one meaning could be wrenched from those words, it must be determined to be ambiguous, and the more beneficial interpretation afforded to the taxpayer, however unlikely and implausible.*"

76. The Commissioner considers that a superficial reading of section 31B(3) could lead one to the view that the only requirement, in order for a claim of return of stamp duty to be granted, is to show to the satisfaction of the Respondent that the relevant agreement had been rescinded. However, when the section is read in the context of the SDCA 1999 as

a whole, and in particular with regard to the provisions of sections 159A and 159B, it is clear that any claim for a repayment of stamp duty, including a claim for a return under section 31B, is subject to the four-year time limit prescribed by section 159A(1).

77. Therefore, it is determined that the provisions of section 31B(3) are subject to the four-year time limit prescribed by section 159A. As the Appellant's claim for a return of stamp duty was made on 2 May 2023, which was more than four years after the instrument was stamped ([redacted] 2018), the Respondent was correct in refusing the claim. Therefore, the appeal is unsuccessful.

Concluding matters

78. Before concluding, the Commissioner will briefly address some other points that arose during the hearing. Firstly, the Appellant had referred to the subsequent amendments to sections 31(4) and 50A(2) of the SDCA 1999 to expressly make them subject to section 159A, and drew attention to the lack of such express wording in section 31B(3). However, pursuant to the Supreme Court's judgment in *Cronin (Inspector of Taxes) v Cork & County Property Company Ltd* [1986] IR 559, the Commissioner is satisfied that he is not permitted to construe section 31B(3) in light of subsequent amendments.

79. Secondly, while the Commissioner has accepted that the correct interpretation of "shall be returned" in section 31B(3) is not immediately obvious, this does not mean that the principle against doubtful penalisation applies. As stated by O'Donnell J in *Bookfinders*:

> "*The general principles of statutory interpretation are tools used to achieve a clear understanding of a statutory provision. It is only if, after that process has been concluded, a court is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text construed given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.*"

80. Finally, the Appellant submitted that, if section 159A was to apply to section 31B(3), the time limit should commence from "*the date the statement of liability was delivered to*" the Respondent, and that a statement of liability issued following the making of the Appellant's amended return on 8 September 2022, which showed a balance outstanding of -€673,056. However, as stated by counsel for the Respondent, that statement of liability issued from the Respondent following the making of the amended return, rather than being delivered to the Respondent by the Appellant. Counsel for the Respondent stated that the "statement of liability" in this context concerned capital companies and banks, and was not relevant in the context of this appeal. In any event, the statement of liability

issued on foot of an amended return which showed a liability of €0.00. However, as found herein, the Appellant was not entitled to a return of the stamp duty paid, and therefore the correct liability remained as originally paid by it, i.e. €673,056. As the amended return was not correct, the statement of liability that issued on foot of it was also incorrect, and thus the question of whether it triggered the four-year time limit does not properly arise.

Determination

81. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent's decision to refuse the Appellant's claim for a return of stamp duty in the amount of €673,056 was correct.

82. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

83. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

84. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
22 May 2024