30TACD2025

Between

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought by [redacted] ("the Appellant") regarding the decision by the Revenue Commissioners ("the Respondent") to raise a charge to capital gains tax ("CGT") against the Appellant in the amount of €131,264. It is this decision that the Appellant is appealing.

2. The appeal proceeded by way of a hearing on 3 October 2024. The Appellant and the Respondent were each represented by Senior Counsel. In addition to hearing oral submissions from the parties' representatives the Appeal Commissioner ("the Commissioner") also heard sworn oral testimony from the Appellant.

Background

3. On 1 December 2023 the Respondent issued a Notice of Amended Assessment and raised a charge to CGT against the Appellant in the amount of €131,264.

4. On 21 December 2023 the Appellant submitted his Notice of Appeal to the Commission. The Appellant's grounds of appeal were:

   "*There is no basis in law or in fact for the amended assessment which is erroneous in principle and excessive in amount and should be reduced by the total amount of the amended assessment.*

   Relevant facts

   The Appellant is a partner in the [redacted] Group ("[redacted]" otherwise "the Partnership") a partnership of [redacted] [redacted] [redacted], [redacted] of which held a 10% share and [redacted] of which held a 5% share. The Appellant held a 10% share.

   The Partnership developed a [redacted] which was constructed at a cost of €23,023,400 (including integrated plant and machinery ("P&M") at a cost of €5,506,195).

   There was a part disposal in [redacted] which resulted in a capital loss of €837,230 leaving a remaining base cost of €19,186,166. Further capital additions occurred in [redacted] and [redacted], increased the base cost to circa €19,642,020.

   In [redacted], the Partnership sold what remained of the [redacted] for €20,000,000. This included 1.79 hectares of land with the benefit of easements,

rights of way and leases. The [redacted] was sold to [redacted]. There was a single contract of sale which transferred the entire interest in the property. The [redacted] was used solely for the purposes of a trade or profession from the beginning of the period of ownership to the time when the disposal was made.

The P&M was also owned by the Partnership from the beginning of the period of ownership of the [redacted] to the time when the disposal was made and that they were used solely for the purposes of the said trade or profession. Wear & Tear Allowances ("WTA's") having been claimed on the qualifying P&M up to the time of disposal, a balancing adjustment was calculated for income tax purposes. The Appellant's Return is correct and the Appellant was entitled to deduct qualifying expenditure on the P&M which was part of the asset disposed of as part of the CGT calculation. The partnership approached the calculation of CGT on the disposal of the [redacted] by taking the entire proceeds of sale (€20,000,000), deducting the costs of disposal (€251,007), calculating the "the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the persons behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal." (Section 552(1) TCA 1997)

The sale of the [redacted] was the disposal of a single asset being the land (which includes any buildings thereon and the fixtures therein). Insofar as land or buildings are disposed of, fixtures are part of the land. All of the P&M in question are fixtures and have accordingly been incorporated into the land. Therefore, (a) the land disposed of ("the disposal of an asset") includes the P&M as fixtures and (b) the cost of acquisition of the whole of that asset is allowable as a deduction for the purposes of Section 552(1) TCA 1997.

Revenue have wrongly claimed that Section 554 TCA 97 should apply to the disposal to restrict the capital expenditure allowable.

Section 554 TCA 97 has no application by reason of Section 555 TCA 97.

Revenue have further wrongly claimed an apportionment was required under Section 561 TCA 97.

Section 561 is inapplicable in the circumstances of present case by reason of Section 561(1) TCA 1997. Section 561(1) TCA 1997 provides that the restrictions of expenditure deductible in the computation of wasting assets are restrictions that do not apply where the wasting asset was used solely for the purposes of a trade or

profession from the beginning of the period of ownership to the time when the disposal was made and qualified in full for capital allowances.

The Partnership did own wasting assets i.e. P&M. Those assets were owned by the Partnership from the beginning of the period of ownership to the time when the disposal was made and that they were used solely for the purposes of a trade or profession. Accordingly, based on Section 561(1)(a) TCA the Partnership should be entitled to deduct qualifying expenditure on those wasting assets as part of the CGT computation. The special rules as to apportionment of expenditure on wasting assets in Section 561(2) do not apply, because they only apply to situations where the wasting asset was not used solely for the purposes of a trade or profession or was only used for part of the time for the purposes of a trade or profession or otherwise qualified in part only for capital allowances. Thus, it is necessary to revert back to Section 555(1) TCA 97 and as no overall loss occurred all of the expenditure qualifies for a deduction under Section 552(1) TCA 97. The Appellant correctly accounted for his share of the qualifying expenditure.

At the time of issuance of notices of amended assessment Revenue indicated that they were still awaiting a legal view on the tax technical position. The Assessment for Chargeable Gains is Overstated.

Without prejudice to the foregoing if an apportionment of the €20,000,000 sale proceeds is required between the land and the P&M, the apportionment adopted by Revenue is not just and reasonable (Section 544(5) TCA 1997) and the assessment is overstated.

Time

Under Section 959AA TCA 1997 the amended assessment raised is invalid.

The Statutory provisions being relied upon.

All Section references below are to Taxes Consolidation Act 1997 ("TCA 1997")

Section 552

Section 554

Section 555

Section 560

Section 561

Section 959AA

The Appellant reserves its rights to rely on other sections of the TCA 1997

Any relevant case law

Bookfinders Limited V Revenue Commissioners

Cintra Infraestructuras International SLU V Revenue Commissioners

The Appellant reserve its rights to present other cases in due course."

5. The Appellant is a [redacted]. In [redacted] [redacted] he and [redacted] formed a partnership of [redacted] partners ("the Partnership") and developed a [redacted] [redacted] in [redacted], [redacted] ("the PCC"). [redacted] of the partners had a 5% share each and all other partners including the Appellant had a 10% share in the PCC.

6. The Respondent assessed all of the partners in the same manner as it had adopted with the Appellant for the purposes of CGT. By agreement the Appellant's case has been taken as the lead case because the outcome of it will deal with identical matters in the other seven appeals that are pending before the Commission.

7. On [redacted] 2009 the Partnership acquired lands at [redacted], [redacted] and built and developed the PCC at a total cost of €23,023,400 which included integrated plant and machinery at a cost of €5,506,195.

8. In [redacted] the Partnership disposed of part of the property and this triggered a capital loss in the amount of €837,230. There was then a remaining base cost of €19,186,166.

9. In [redacted] [redacted] [redacted] €19,642,020. The plant and machinery qualified in full for capital allowances and the Appellant claimed his proportionate share of the available capital allowances in his income tax returns.

10. On [redacted] the Partnership entered a contract for the sale of the remainder of the property to a third party for the sale price of €20,000,000. There was no apportionment of the sale price as between land and plant and machinery specified in the contract. The disposal under the contract concluded in [redacted].

Legislation and Guidelines

11. The legislation and guidelines relevant to this appeal are set out in Appendix I and II hereto.

Evidence

[REDACTED] – *the Appellant*

12. The Appellant stated the document entitled "*Appellant Statement*" dated 30 September 2024 (which had been earlier handed into the Commissioner by Counsel for the Appellant) was his evidence and was correct and true and accurate. The Appellant was asked by his Counsel to refer to entries appearing in the 2018 financial statement and he was asked what was "*Fixtures, Fittings and Equipment column*"? – the Appellant replied that was *"……actually part of the building that had to be converted to accommodate some part of the [REDACTED], it was damaged in the building*". In reply to his Counsel as to whether it was an alteration to the building to accommodate a tenant – the Appellant stated "*Yes*".[1]

Submissions

The Appellant's submissions

13. The Commissioner sets out an extract of the Appellant's Statement of Case as follows:

"*1. The Appellant is a partner in the [REDACTED] [REDACTED] ("[REDACTED]" otherwise "the Partnership") a partnership of [REDACTED] [REDACTED] [REDACTED], [REDACTED] of which held a 10% share and [REDACTED] of which held a 5% share. The Appellant held a 10% share.*

2. The Partnership developed a [REDACTED] which was constructed at a cost of €23,023,400 (including integrated plant and machinery ("P&M") at a cost of €5,506,195).

3. There was a part disposal in [REDACTED] which resulted in a capital loss of €837,230 leaving a remaining base cost of €19,186,166. Further capital additions occurred in [REDACTED] and [REDACTED], increased the base cost to circa €19,642,020.

4. In [REDACTED], the Partnership sold what remained of the [REDACTED] for €20,000,000. This included 1.79 hectares of land with the benefit of easements, rights of way and leases. The [REDACTED] was sold to [REDACTED]. There was a single contract of sale which transferred the entire interest in the property. The [REDACTED] was used solely for the purposes of a trade or profession from the beginning of the period of ownership to the time when the disposal was made.

5. The P&M was also owned by the Partnership from the beginning of the period of ownership of the [REDACTED] to the time when the disposal was made and that they were used solely for the purposes of the said trade or profession. Wear & Tear

[1] Hearing Transcript: pg. 79

Allowances ("WTA's") having been claimed on the qualifying P&M up to the time of disposal, a balancing adjustment was calculated for income tax purposes.

All Section references below are to Taxes Consolidation Act 1997 ("TCA 1997")

Section 552

Section 554

Section 555

Section 560

Section 561

The Appellant reserves its rights to rely on other sections of the TCA 1997

Revenue Commissioners v Doorley [1933] IR 750,765

Perrigo Pharma v McNamara, Revenue Commissioners and others. 2020 IEHC

552 par 74.

Bookfinders Limited V Revenue Commissioners 2020 IESC 60

Cintra Infraestructuras International SLU V Revenue Commissioners 2023 IEHC 72

The Appellant considers that the Return is correct and the Appellant was entitled to deduct qualifying expenditure on the P&M which was part of the asset disposed of as part of the CGT calculation.

The partners approached the calculation of CGT on the disposal of the [redacted] by taking the entire proceeds of sale (€20,000,000), deducting the costs of disposal (€251,007), calculating the "the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the persons behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal." (Section 552(1) TCA 1997)

The sale of the [redacted] was the disposal of a single asset being the land (which includes any buildings thereon and the fixtures therein). Insofar as land or buildings are disposed of, fixtures are part of the land. All of the P&M in question are fixtures and have accordingly been incorporated into the land. Therefore, (a) the land disposed of ("the disposal of an asset") includes the P&M as fixtures and (b) the cost of acquisition of the whole of that asset is allowable as a deduction for the purposes of Section 552(1) TCA 1997.

Revenue have wrongly claimed that Section 554 TCA 97 should apply to the disposal to restrict the capital expenditure allowable. Section 554 TCA 97 has no application by reason of Section 555 TCA 97. Revenue have further wrongly claimed an apportionment was required under Section 561 TCA 97.

Section 561 is inapplicable in the circumstances of present case by reason of Section 561(1) TCA 1997.

Section 561(1) TCA 1997 provides that the restrictions of expenditure deductible in the computation of wasting assets are restrictions that do not apply where the wasting asset was used solely for the purposes of the trade from the beginning of the period of ownership to the time when the disposal was made and qualified in full for capital allowances.

The Partnership did own wasting assets i.e. P&M. Those assets were owned by the Partnership from the beginning of the period of ownership to the time when the disposal was made and that they were used solely for the purposes of the trade or profession. Accordingly, based on Section 561(1)(a) TCA 1997 the Partnership should be entitled to deduct qualifying expenditure on those wasting assets as part of the CGT computation. The special rules as to apportionment of expenditure on wasting assets in Section 561(2) TCA 1997 do not apply, because they only apply to situations where the wasting asset was not used solely for the purposes of a trade or profession or was only used for part of the time for the purposes of a trade or profession or otherwise qualified in part only for capital allowances. Thus, it is necessary to revert back to Section 555 (1) TCA 1997 and as no overall loss occurred all of the expenditure qualifies for a deduction under S552 (1) TCA 1997. The Appellant correctly accounted for his share of the qualifying expenditure."

Oral submissions on behalf of the Appellant.

14. In oral submissions Counsel for the Appellant submitted that the matter before the Commission was an issue of statutory construction and that its correct resolution requires a disciplined and sequential approach to the statutory provisions. Counsel submitted that the matter concerns CGT and a "…*single disposal of lands and buildings and in the land and buildings are integral plant and machinery*".

15. Counsel submitted that the sale of the land includes the buildings on the land and included the fixtures and fittings in the building(s).

16. Counsel submitted that the Appellant's capital gains was calculated on the basis of the sale price of the land and buildings, less essentially the acquisition costs, plus additions and that led to a small profit on which CGT was paid.

17. Counsel submitted that the Respondent submits that the Appellant is incorrect in how the Appellant calculated his capital gains. Counsel submitted that the Respondent submits that the sale by the Appellant was two separate disposals; one of the plant and machinery and the other of the lands and buildings (not including the plant and machinery). Counsel further submitted that in adopting that method the Respondent calculates a different amount owed by the Appellant in respect of CGT as the plant and machinery had capital allowances claimed on it which serves to reduce the acquisition cost. Counsel submitted that it is the Respondent's submission that by taking out the plant and machinery at the lower acquisition cost the profit on the remainder is increased. Counsel submitted that this method and treatment by the Respondent is flawed.

18. Counsel submitted that there is no statutory provision which enables the Respondent to do the computation for CGT in the manner performed by the Respondent. Counsel submitted that the Respondent's submission that a single disposal of lands and buildings which was effected by one single contract should be treated for the purposes of calculation of CGT liability as if it was effected by two separate disposals that requires two separate CGT calculations so as to apportion the consideration between the plant and machinery and the lands and buildings is flawed.

19. Counsel submitted that the Respondent cannot point to any statutory provision enabling it to apply two separate computations. Counsel submitted that the Respondent is mistaken in its submission that it is enabled to do this by the provisions of section 561(2) of the TCA 1997.

20. Counsel further submitted that the Appellant had one single disposal as there was one contract to the purchaser who wanted to buy the building and the lands and its value was in buying an entire functioning building on land. Counsel submitted that it was a single disposal of a single asset all of which was being used for the purpose of trade or profession for the entire period of ownership.

21. Counsel submitted that the taxpayer is entitled to know and to have clear rules and established practice as to how capital gains on the disposal of land and buildings including integrated plant and machinery is to be treated for CGT purposes. Counsel submitted that the approach adopted in this matter by the Respondent is novel. Counsel submitted that the rule of law demands that any such rules be set out clearly in statutory provisions.

22. Counsel submitted that "*land*" included buildings and every other thing on land. Counsel referred to the definition of "*land*"[2] in the Interpretation Act of 2005; "*Land includes*

[2] Interpretation Act of 2005: Section 21 Part 1 of the Schedule

tenements, hereditaments, house and buildings, land covered by water and any estate, right or interest in or over land". Counsel submitted that therefore fixtures become part of the land as a matter of land law as they are incorporated in the land. Counsel referred to section 5 of the TCA 1997 which also includes a definition of "*land*" as "*Land includes any interest in land*". Counsel submitted that the legal concept of land is broad and includes every interest in land and everything on the land which is attached to the land such as buildings and fixtures.

23. Counsel submitted that the value of land with a building on it is usually greater than the value of the land with no building on it. Counsel submitted that many buildings require fixtures otherwise known as plant and machinery to properly function such as lifts and air conditioning units and they enhance the value of the building which enhances the value of the land. Counsel further submitted that when land is sold to a purchaser which necessarily includes all buildings and fixtures and fittings that are integrated into the building they are an integral part of the building.

24. Counsel referred to the "*Appellant Statement*" (which had been handed into the Commission at the commencement of the hearing and a copy of which had been furnished to Counsel for the Respondent) and referred to various averments in the document as follows:

    24.1. In the second paragraph the Appellant avers that the overall purchase price of the land and buildings was €23,023,400 which included integrated plant and machinery and the integrated plant and machinery were acquired at a cost of €5,506,195;

    24.2. In the third paragraph the Appellant avers that in the Partnership disposed of part of the property which gave rise to a capital loss in the sum of €837,230 which left a remaining base cost of €19,186,166;

    24.3. In the third paragraph the Appellant avers that in and in there were further capital additions in the amount of €455,853.87 which increased the base cost to €19,642,000. The plant and machinery qualified in full for capital allowances and the Appellant and the other members of the Partnership claimed their proportionate share of the capital allowances in their income tax returns;

    24.4. In the fifth paragraph the Appellant avers that on the Partnership entered into a contract for sale for the remainder of the property to a third party for a purchase price of €20,000,000. There was no apportionment of

the purchase price in the contract between the land and the plant and machinery. In [redacted] the sale on foot of the contract for sale was completed;

24.5. In the sixth paragraph the Appellant avers that on [redacted] a valuation was obtained for capital allowances purposes and for calculating a balancing charge which valued the plant and machinery at €785,514;

24.6. In the sixth paragraph the Appellant avers that on [redacted] the plant and machinery had a tax written down value of €480,966 and on the disposal of the property a balancing charge of approx. €305,000 was calculated by the Partnership and the Appellant accounted for that.

25. Counsel cited authorities [3] in support of the Appellant's grounds of appeal and submissions.

26. Counsel referred to section 544(2) of the TCA 1997 which provides:

(2)References in this Chapter to sums taken into account as receipts or as expenditure in computing profits, gains or losses for the purposes of the Income Tax Acts shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession or employment are not chargeable to income tax or that losses are not allowable for those purposes.

27. Counsel referred to section 544(5) of the TCA 1997 which provides:

(5)For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be just and reasonable;

28. Counsel submitted that the above provisions are not statutory provisions that empower the Respondent to carry out an apportionment. Rather, it is a procedural provision which follows upon some other provision that requires or permits the Respondent to carry out an apportionment. Counsel submitted that the above cited sub sections/provisions only apply then and it is not a provision of wide ranging import that would require the Respondent to apportion consideration in any case where they see fit.

[3] Booklet of Authorities

29. Counsel referred to section 552(1) of the TCA 1997 which provides:

    (1)Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset………………

30. Counsel submitted that what is involved in this case is a disposal of a single asset and the asset was disposed for €20,000,000 and the cost of the acquisition and any expenditure on enhancing the asset and incidental costs are taken out and what is left is the gain. Counsel further submitted that is the approach that was taken by the Appellant and the other partners of the Partnership having taken professional advice on the calculation of the gain.

31. Counsel submitted that section 552(2) of the TCA 1997 gives further detail as to what incidental costs would be. Section 552(2) of the TCA 1997 provides:

    (2)For the purposes of the Capital Gains Tax Acts as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with –

    (a)in the case of the acquisition of an asset, costs of advertising to find a seller, and

    (b)in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

32. Counsel further submitted that one could stop there and not go any further and that was the approach to be adopted, that one takes the gain on the disposal of the single asset and one taxes that. However, the sections in the TCA 1997 do not stop at section 552 thereof. Counsel submitted that there are a number of other sections that are postulated as potentially relevant to allowing the Respondent to adopt the approach they did.

33. Counsel referred to section 554 of the TCA 1997 "*Exclusion of Expenditure by Reference to Income Tax*" and submitted that it needs to be read in connection with section 555 of the TCA 1997 as they are intimately linked. Counsel submitted that section 554 of the

TCA 1997 provides inter alia that: *"(1)There shall be excluded from the sums allowable under section 552 as a deduction any expenditure allowable as a deduction in computing the profits or gains or losses of a trade or profession for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts…."*

34. Counsel submitted that the above provision is the basic rule brought in by section 554 of the TCA 1997 and that reading it on its own, one might interpret it as meaning that the provision requires the exclusion from the sums to be allowable as a deduction of amounts in respect of which a capital allowance was claimed. Counsel submitted that the rule in section 554 of the TCA 1997 is qualified by the provisions of section 555 of the TCA 1997. Counsel submitted that section 555 of the TCA 1997 clarifies that section 554 of the TCA 1997 does not apply to expenditure in respect of which capital allowances are claimed except if a person is computing a *loss*.

35. Counsel submitted that section 555 of the TCA 1997 "*Restriction of Losses by Reference to Capital Allowances and Renewals Allowances*" is not a section which provides for the enhancement of gains which is what the Respondent wants to do and it is rather a provision restricting the losses. Section 555 of the TCA 1997 provides:

    (1)Section 554 shall not require the exclusion from the sums allowable as a deduction under section 552 of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made but, in the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of that expenditure.

36. Counsel submitted the effect of the above provision is that one is back to the status as at the end of section 552 of the TCA 1997, because although section 554 of the TCA 1997 introduced the possibility that in deducting the acquisition cost or expenses, that one would not be entitled to deduct one's expenses in respect to which capital allowances were claimed in calculating the gain. Section 555 of the TCA 1997 provides that that rule does not apply in the case of capital allowances when one is trying to calculate the gain, but if one is calculating a loss that would be different. Counsel further submitted that when one applies the provisions of sections 554 and 555 of the TAC 1997 to the facts of this case, one is left in the position where one was at the end of section 552 of the TCA 1997, in that one has a single asset of land and buildings with integrated plant and machinery which is sold and one is trying to calculate the gain on it and that because there was a gain on that disposal, one is entitled to deduct all of the acquisition costs.

37. Counsel referred to sections 560 and 561 of the TCA 1997 which like sections 554 and 555 of the TCA 1997 have to be read together. Counsel submitted that in this case, one does not get as far as the point as assessing the provisions of sections 560 and 561 of the TCA 1997, because of the position one is in after the application of the provisions of section 555 of the TCA 1997, which provides that one is entitled to deduct the full acquisition costs in calculating the gain.

38. Counsel referred to section 560 of the TCA 1997 "*Wasting Assets*" and referred to section 560(1) of the TCA 1997: "*wasting asset" means an asset with a predictable life not exceeding 50 years, but so that – (a)freehold land shall not be a wasting asset whatever its nature and whatever the nature of the buildings or works on that land,...",*

    Counsel submitted that the enhancing of the building by installing e.g. a HVAC system, a lift, etc. are examples of enhancing the building and of work on the land. Counsel referred to subsection (c): *"plant (other than plant that is a work of art) and machinery shall in every case be regarded as having a predictable life of less than 50 years…*"; and Counsel submitted that the lift and the HVAC system are plant and machinery and they are included within the definition of a wasting asset.

39. Counsel submitted that if one proceeds to subsections (3) to (5) of section 560 of the TCA 1997, where the basic rule on the approach to the calculation of a gain accruing on the disposal of a wasting asset is provided therein. Section 560(3) to (5) of the TCA 1997 provides:

    "(3)In the computation under this Chapter of the gain accruing on the disposal of a wasting asset, it shall be assumed –

    (a)that any expenditure attributable to the asset under section 552(1)(a), after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nil at the end of its life, and

    (b)that any expenditure attributable to the asset under section 552(1)(b) is written off at a uniform rate from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nil at the end of its life.

    (4)Where any expenditure attributable to the asset under section 552(1)(b) creates or increases a residual or scrap value of the asset, the residual or scrap value to be deducted under subsection (3)(a) shall be the residual or scrap value so created or increased.

(5)Any expenditure written off under this section shall not be allowable as a deduction under section 552.";

Counsel submitted that the above provisions are rules that are specifically crafted in the context of the disposal of a wasting asset which is the operative rule upon which the CGT on wasting assets is calculated using the write-down value.

40. Counsel referred to section 561 of the TCA 1997, and submitted that, that rule is disapplied in relation to certain categories of wasting asset and section 561 of the TCA 1997 is essentially a carve-out from the rule in section 560 of the TCA 1997; a carve-out from the rule for wasting asset, in respect of wasting assets that qualify for capital allowances and is entitled "*Wasting Assets Qualifying for Capital Allowances*": *"(1)Subsections (3) to (5) of section 560 shall not apply in relation to a disposal of an asset-"*. Counsel submitted that subsections (3) to (5) of section 560 of the TCA 1997 apply to wasting assets and they can only apply to wasting assets. Counsel submitted that when the section states that subsections (3) to (5) of section 560 of the TCA 1997 shall not apply in relation to a disposal of an asset that it is of necessity referring to a "*wasting asset*". Counsel submitted that the term "*asset*" in section 561 of the TCA 1997 is referring to the wasting asset, and that it has to be so, as subsections (3) to (5) of section 560 of the TCA 1997 only apply to wasting assets.

41. Counsel again referred to section 561(1) of the TCA 1997 which provides:

    (1)Subsections (3) to (5) of section 560 shall not apply in relation to a disposal of an asset –

    (a)which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used solely for the purposes of a trade or profession and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or (b) of section 552(1), or

    (b)on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance";

42. Counsel submitted that the above provisions apply to the consideration of wasting assets in a number of situations. The first situation is addressed at subsection (a) which provides that the wasting asset (a) "*which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used solely for the purposes of a trade or profession...."* and in respect of which, capital allowances have been or could have been claimed. Counsel submitted that it is referring to two things; the

use and the period. Counsel submitted that the wasting asset was used for the purposes of trade or profession and for the whole of the period then the matter comes within the provisions of subparagraph (a).

43. Counsel submitted that if the above analysis to the case herein and the method of computation as adopted by the Respondent were followed, (in that the consideration was split into two tranches and the plant and machinery was treated separately) that even on that analysis, the plant and machinery is entitled to the benefit of section 561(1)(a) of the TCA 1997, in which case subsections (3) to (5) of section 560 of the TCA 1997 do not apply to the disposal.

44. Counsel submitted that there was another way in which one could come within the provisions of subsection (1) and that was set out in subparagraph (b) which is an alternative to subparagraph (a) as the word "*or*" is stated and it is disjunctive and it provides; "*or*" "(*b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance*". Counsel submitted that if one was disposing of a wasting asset and one has incurred expenditure which qualified in full for capital allowances, quite apart from being used solely for the purposes of trade or profession for the entirety of the period, that one is entitled to avail of the disapplication of subsections (3) to (5) of section 560 of the TCA 1997 by virtue of section 561(1) of the TCA 1997.

45. Counsel submitted that in this matter, the Appellant did incur expenditure on plant and machinery which did qualify in full for capital allowances and therefore the Appellant does come within the provisions of subparagraph (b). Counsel submitted that accordingly, if one treats this matter as a separate disposal of a wasting asset it does not enable the Respondent in the way they say they are enabled. Counsel submitted that the reason why the Respondent is not so enabled is because there is an express statutory provision which states that the rule that one uses write-down value as the acquisition cost is disapplied in these cases.

46. Counsel referred to section 561(2) of the TCA 1997:

(2)In the case of the disposal of an asset which in the period of ownership of the person making the disposal has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for part of that period, or which has otherwise qualified in part only for capital allowances –

(a)the consideration for the disposal and any expenditure attributable to the asset under paragraph (a) or (b) of section 552(1) shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,

(b)the computation under this Chapter of the gain on the disposal shall be made separately in relation to the apportioned parts of the expenditure and consideration,

(c)subsections (3) to (5) of section 560 shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade or profession or to the expenditure qualifying for capital allowances,

(d)if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on that person, that apportionment shall be employed for the purposes of this section, and

(e)subject to paragraph (d), the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a);

47. Counsel submitted that the Respondent in trying to justify the charge to CGT made against the Appellant by reference to the application of the provisions of section 561(2) of the TCA 1997 without any real regard to the provisions of section 560 of the TCA 1997 or the provisions of section 561(1) of the TCA 1997.

48. Counsel submitted that the Respondent in adopting its approach has failed to have regard to the fact that section 561(2) of the TCA 1997 dealt with limited situations where particular assets did not fall within subsection (1) because they were not used entirely for the purposes of trade or profession or the use would not have fully qualified for capital allowances. Counsel submitted that the Respondent ignored the fact that it was dealing with an example of the disposal of a wasting asset such as a forklift truck [an example given earlier by Counsel] and that the Respondent tried to force a situation where land and buildings with integrated plant and machinery was being "*….shoehorned into subsection (2)".* Counsel submitted that in this case the asset disposed of is land and buildings which is not a wasting asset, which included integral plant and machinery and if only part of that qualified for capital allowances this would entitle the Appellant to carry out the split without any regard for the fact that if the Respondent adopted that approach then the part which was a wasting asset had already qualified in subsection (1) from the exemption for the rules provided for by section 560 of the TCA 1997 and would not then

proceed to subsection (2). Counsel submitted that to do that would be a complete misconstruction of the statute.

49. Counsel submitted that if the Respondent wanted to avail of the provisions of section 544 of the TCA 1997 then it could bring the matter within subsection (2) a particular asset. There would then be a statutory provision mandating apportionment and the Respondent would then be mandated to use the procedure of "*fair and reasonable*". However, without the substantive provision permitting the Respondent to do such an apportionment, the Respondent could not do that under section 544 of the TCA 1997.

50. Counsel referred to the Respondent's *Tax and Duty Manual ref: 19-02-12*[4] (which had been handed into the Commission at the start of the hearing) ;

    "12.2: In general, expenditure which has qualified for capital allowances or renewals allowances (see para 12.1) should not be excluded from the CGT "cost" of the asset. To the extent that a loss on an asset has been covered by capital allowances, however, it is not to be allowed again for CGT purposes.";

    Counsel submitted that the above is what the Appellant submits, that the capital allowances should not be excluded from the cost. Counsel submitted that it was clear that the exclusion from use applied to where there was a <u>loss</u>. Counsel submitted that where capital allowances have been claimed in respect of the buildings, one does not apportion this consideration into two separate disposals and treat part of the factory for capital allowances and split it out or state that the deductible acquisition cost has to be the written down value.

51. Counsel referred to the Respondent's *Tax and duty Manual: Part 19-02-17*: "*Wasting assets qualifying for capital allowances" (July 2022): "17.1 Application - The straight-line restriction of allowable expenditure on wasting assets should not be applied to assets the allowable expenditure on which has qualified in full for capital allowances (including renewals allowance). They should be dealt with in accordance with Tax and Duty Manual (TDM) Part 19-02-12 with the result that there is, in general, no chargeable gain (and no allowable loss) unless the disposal proceeds exceed the first cost (see example 1 below).*"

52. Counsel submitted that at the end of the review of the statutory provisions in the context of the facts of this case, there was a disposal of a single asset at a profit which resulted in a gain. Regarding tax purposes ,section 552 of the TCA 1997 provides that you deduct the acquisition cost. Section 555 of the TCA 1997 provides that because it is a gain, you

[4] Tax and Duty Manual – Restriction of losses by reference to capital allowances and renewal allowances" Part 19-02-12 July 2020

do not exclude sums in respect of which a capital allowance was granted. Sections 560 and 561 of the TCA 1997 do not apply because what was disposed of was not two separate assets but a single asset including integrated plant and machinery. Counsel submitted it would only apply where the asset disposed of is a wasting asset and in this instance the single asset that was disposed of by the Appellant was not a wasting asset. Counsel submitted that even if the single asset was categorised as a wasting asset, then section 561(1) of the TCA 1997 would apply in order to disapply any requirement to adopt a treatment of write-down value of acquisition costs.

53. Counsel referred to the Booklet of Documents. Counsel referred to the copy Contract for Sale[5] exhibited therein which recorded that there was a written contract for lands (two tranches of land both held in Fee Simple) more particularly described therein and with the benefit of easements and privileges for the purchase price of €20,000,000. The sale of the land included all buildings and fixtures and fittings thereon.

54. Counsel referred to the copy CG50A[6] (application for issue of a clearance certificate in respect of CGT required to be furnished to a purchaser for full value on completion of the sale of a property). Counsel submitted that recorded thereon was the sale price of €20,000,000 and the market value of the asset at the date of the original acquisition of €19,186,168. Counsel submitted this was entirely consistent in that the sale of the land and buildings including the integrated plant and machinery was for €20,000,000 and its acquisition cost was €19.1 million. Counsel referred to the CG50 Certificate[7] which the Respondent issued.

55. Counsel referred to the Appellant's/ the Partnership's CGT computation in respect of the disposal[8]. Counsel submitted that the computation was done in a standard manner regarding the sale of the land and buildings. The total cost was calculated at €19.6 million which gave rise to a chargeable gain of €106,966.

56. Counsel referred to the copy financial statements for the year ended 31 December 2018[9] Counsel referred to "*tangible assets*"[10], land and buildings with a value of €19.6 million and includes integrated plant and machinery that was originally acquired and added to. Counsel advised that the Appellant would give testimony to confirm this (see earlier). Counsel referred to a separate column entitled "*plant and machinery*" and he advised that

[5] Booklet of Documents – Tab 6
[6] Ibid – Tab 6
[7] Ibid – Tab 8
[8] Ibid – Tab 11
[9] Ibid – Tab 14
[10] Transcript - 63.5

his instructions were that this related to some desks and computers which were not sold to the purchaser and the same applied with regard to "*fixtures, fittings and equipment*" being small items not taken by the purchaser. Counsel submitted that the "*land and buildings freehold column*" is where you find everything that was part of the original acquisition and the integrated plant and machinery. There were additions to that and then the disposal and then by the end of the year the net book value was Nil.

57. Counsel then referred to documents included in the Booklet of Documents concerning the engagement by the Appellant of professional advisors and their engagements with the Respondent on behalf of the Appellant/the Partnership. Counsel read an extract from a letter from ▇▇▇▇ acting on behalf of the Appellant;[11] "*CGT is chargeable on the difference between the sales consideration received on the disposal of an asset and the base cost of the asset being disposed of. Where there is only one asset disposal, only one capital gains tax computation is required. Section 552 TCA 1997 is the relevant section….*". Counsel added that the letter from ▇▇▇▇ proceeds to state that there are specific provisions that restrict the deductibility of certain expenditure; section 554 of the TCA 1997, specifically excludes a deduction for CGT purposes for any expenses taken into account in computing profits or losses. Counsel then read an extract[12] from the letter from ▇▇▇▇ which stated that "*Section 560 restricts the expenditure deductible on the computation of gain or loss on wasting assets. 561 clarifies no restriction should be applied to expenditure incurred on P & M which was used for purposes of trade or profession. On the basis that WTAs were claimed on the expenditure incurred on the P &M, there should be no need to apply a restriction under section 560 as section 555 clarifies that section 554 does not exclude a deduction on any expenditure on which WTAs were claimed. However, where a capital loss arises on a disposal of an asset, that capital loss is restricted*".

58. Further Counsel read from the said letter from ▇▇▇▇ as follows: "*In the case of a building that has integral P & M fixtures the disposal should be considered the disposal of a single asset for CGT purposes i.e. the building or more specifically the land on which the building sits, is the asset being disposed of". [13] Counsel submitted that under the contract for sale the only asset sold was an interest in land. This included anything fixed to the land including the buildings and any integral P&M fixtures i.e. electrical installations, lifts, etc. A capital gain arose and no capital loss occurred. Therefore section 555 of the TCA 1997 is not relevant. Counsel quoted further from the letter "Given the plant in question is*

[11] Transcript – 71.3
[12] Transcript – 72.1
[13] Ibid – 72.19

integrated in the building there was no requirement to include a separate listing. It was transferred as part of the one asset sale, and we have previously provided the capital allowance schedule per partner". [14]

The Respondent's submissions

59. The Commissioner sets out an extract from the Respondent's Statement of Case as follows:

"1*. Statutory provisions being relied on*

Section 288 Taxes Consolidation Act 1997

Section 289 Taxes Consolidation Act 1997

Section 551 Taxes Consolidation Act 1997

Section 554 Taxes Consolidation Act 1997

Section 555 Taxes Consolidation Act 1997

2. Outline of relevant facts

2.1 Taxpayer was a partner in the [redacted] ([redacted]) and held a 10% shareholding in the Partnership.

2.2 [redacted] developed the [redacted] at a cost of approx. €23m.

2.3 There was a part disposal of the centre in [redacted] leaving a remaining base cost of approx. €19m.

2.4 This disposal was at a loss, and The taxpayer carried losses of forward from this transaction.

2.5 As per the records of [redacted] Plant and machinery (P&M) were acquired at a cost of approx. €5,506,195 in the years 2009 – 2011. The valuation of the P&M is not in dispute.

2.6 The P&M qualified for capital allowances 2010 –2017 and the taxpayer claimed his portion of capital allowances on his income tax returns 2010 - 2017.

2.7 As per [redacted] records the P&M had a tax written down value of approx. €481k at 31.12.2017.

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[14] Transcript – 73.7

2.8 [redacted] were commissioned to revalue the P&M and as per their valuation report, dated 24 October 2017, the market value of the P&M was €785,514 as at 26.09.2017. This valuation is not in dispute.

2.9 In February 2018, [redacted] sold the centre and the P&M to [redacted] for €20m.

2.10 Income Tax - a balancing charge of approx. €305k was calculated on the disposal of the P&M and each of the partners included their share of same on their income tax return for 2018.

2.11 As per the Capital Gain Tax Return for 2018 – A chargeable gain of €10,697 was computed on the disposal of the centre, comprising both the building and the P&M. This gain was sheltered by prior year losses.

2.12 It is Revenue's view that the P&M and Land & Buildings disposed of were chargeable assets and separate Capital Gains Tax computations were required for both.

2.13 To calculate the chargeable gain/loss arising on the disposal, an apportionment of the €20m sales proceeds between land & buildings (capital allowances not claimed) and P&M (qualifying for capital allowances) is necessary. A just and reasonable apportionment would be €785k for the P&M, as per professional valuation obtained by the sellers, and the remaining €19.215m for the building.

2.14 Revenue has raised an amended assessment which apportions the sales proceeds between the Land & Buildings and the P&M. This resulted in a gain on the sale of the land & buildings and a loss on the sale of P&M.

2.15 The loss arising on the sale of the P&M is restricted under Section 555 TCA 1997.

2.16 The assessment raised is based on the taxpayer's 10% partnership share. The Chargeable gain was €482,765.

2.17 Allowing for losses forward and the taxpayer's personal exemption, the chargeable gain assessed was €397,772 resulting in an assessment for Capital Gains Tax of €131,265.

2.18 The taxpayer has appealed this assessment."

Oral submissions on behalf of the Respondent.

60. In oral submissions Counsel for the Respondent submitted that the matter before the Commission was essentially about the correct method of computation of CGT. Counsel submitted that the Appellant submits that the method used by him is correct whereas the

Respondent submits that the Appellant is incorrect and that there is another method which should be used.

61. Counsel submitted that the issue to be determined by the Commissioner is which method of calculation of CGT is correct by reference to the statutory provisions that are relevant in calculating a capital gain and then CGT.

62. Counsel submitted that there are special rules set out in Chapter 2 of the TCA 1997 which govern how a computation of CGT is to be carried out. Counsel further submitted that these provisions state what can and cannot be deducted and what allowances can and cannot be made in conducting the computation.

63. Counsel submitted that what was sold was a single asset but it comprised two distinct elements from a tax point of view. One element was the plant and machinery which attracted capital allowances during the period of ownership during which the Appellant held the property. The other element is the land which did not attract capital allowances. Counsel further submitted that because there are those special rules, the only way these rules can be properly applied is to separate out for tax purposes the consideration on the sale into two tranches; one representing the plant and machinery and the other representing the land. Counsel further submitted that then two parallel computations shall be conducted to calculate if there is a chargeable gain. Counsel submitted that the loss that has accrued on the plant and machinery cannot be factored in to reduce the capital gain.

64. Counsel submitted that one must separate out for tax purposes the consideration. Counsel submitted that this method was not expressly mandated by any statutory provision but that the computational rules cannot be followed properly unless the consideration is separated into two tranches because otherwise a rule would be applied to an asset which has more to it than the rule is designed to accommodate.

65. Counsel submitted that you cannot treat the consideration as if it were one unified amount because they are different and therefore different rules apply to the plant and machinery portion of it and to the land portion of it. Counsel submitted that is why an apportionment under section 544(5) of the TCA 1997 is necessary in this situation. Counsel further submitted that there is no provision anywhere in the TCA 1997 that deals directly with this kind of situation, where you have an asset which consists both of a portion which is subject to capital allowances or upon which capital allowances have been claimed and a portion which is not, or a portion which is a wasted asset and a portion which is not a wasting asset, but which is comprised in one single disposal or one single asset for the purpose of disposal.

66. Counsel submitted that a just and equitable apportionment under section 544(5) of the TCA 1997 can be made on the basis of the valuation obtained by the Appellant and that the plant and machinery ought to be attributed with a value of €785,514 out of the €20,000,000 and that the balance of €20,000,000 must be in respect of the land and buildings.

67. Counsel submitted that the costs of acquisition was €23,000,000 approx. and there was a part disposal in ████ of €3.8M approx. and that leaves a figure of €19,186,166 which Counsel referred to as the "base cost". Counsel submitted that the sum may be apportioned as between the value attributed to plant and machinery (as per the valuation prepared) (€5.506M) and the balance which must be attributable towards the land and buildings. Counsel submitted then the expenditure made in ████ of €455,854 is deducted from this figure which gives a figure of €4,827,654 being the gain on the land and buildings side. Counsel submitted that however, the loss that had accrued by the Partnership on the disposal of the plant and machinery comes to €4,720,681 and that section 555 of the TCA 1997 provides that cannot be allowed. Counsel submitted that it is not allowed as it is a loss that accrued on the disposal of an asset being plant and machinery or the plant and machinery portion of the PCC. Counsel added, that loss is restricted by the capital allowances that were paid out by the Respondent to the Partnership during the period of ownership and therefore it cannot be carried over so as to offset the sum of €4,827,654 being the gain on the land and buildings. Counsel added that if one was to carry over the €4.7M and apply it to the gain on the land and buildings one arrives at a figure of €106,973 which Counsel further added was the figure the Appellant submits is applicable. Counsel, submitted that the Respondent's position is that this procedure is not allowed by virtue of the application of section 555(1) of the TCA 1997 because that provision precludes bringing into account a loss upon which one has already claimed and enjoyed capital allowances during the period of one's ownership. Counsel further submitted that if that was so allowed it would allow potentially for a loss to be recycled through the capital gain computation. Counsel submitted that as the loss was used initially to obtain capital allowances over the period of ownership and then the loss was reused in the computation of a chargeable gain, that section 555 of the TCA 1997 is designed to prevent one from doing this. Counsel submitted that one is not allowed to recycle a loss upon which capital allowances have already been claimed.

68. Counsel submitted this issue is at the very heart of the dispute between the parties. Counsel for the Respondent submitted that Counsel for the Appellant submitted that one does not need to separate out the consideration into tranches and that loss is in the plant and machinery which yields a much lower figure of a chargeable gain of €106,973 for all

of the Partnership/partners and 10% of that amount is assessable against the Appellant. Counsel submitted that this scenario does not engage with section 555 of the TCA 1997.

69. Counsel submitted that an explanation of why the Appellant is incorrect in his methods is because having identified that there are wasting assets comprised in the disposal and having identified that they are not subject to the special computation rules of section 560 of the TCA 1997 (unlike other wasting assets) as they are wasting assets upon which a capital allowances were claimed, and having identified all that, it is unclear then where the taxpayer goes with that. Counsel submitted that the Respondent's position is that the taxpayer must go back to section 555 of the TCA 1997 and in this matter it appears that the Appellant did not go back to section 555 of the TCA 1997.

70. In conclusion, Counsel submitted that the Respondent says two things. The first is the Respondent's position is that an apportionment of the proceeds of sale is not only permitted but it is mandated by section 544(5) of the TCA 1997 because it is necessary in this situation where you have an asset which is comprised of two different types of asset for tax purposes, or two assets which attract a different treatment, having regard to computational procedures in the TCA 1997. Counsel submitted that you have to apportion the proceeds between wasting assets and the non-wasting assets, or between the assets which have attracted capital allowances and those which have not which amount in this case to the same thing, the plant and machinery and the land and buildings, you have to apportion the proceeds.

71. Counsel submitted that he accepted as correct what Counsel for the Appellant had earlier submitted that the aforementioned apportionment into two tranches was not expressly mandated in the TCA 1997. But, Counsel added that the provisions of section 544 of the TCA 1997 appear to be sufficiently wide to allow an apportionment in any case in which it becomes necessary. Counsel added that he submitted that this is a case where it is patently necessary to do such an apportionment because there are two different types/elements within the same asset that need to be treated differently and to which different computational rules apply.

72. Counsel submitted that the second proposition is the loss accruing to the Partnership on the plant and machinery is a loss which is precluded from being factored into/ taken into account in the computation of the chargeable gain by virtue of the provisions of section 555 of the TCA 1997. Counsel submitted there was also the underlying reason to prevent somebody claiming capital allowances during the period of ownership on particular expenditure and then recycling that expenditure into a computation of a chargeable gain on the disposal of an asset. Counsel further submitted the preclusion is to stop the loss

being used twice having had the capital allowances on that expenditure during the period of ownership.

73. Counsel submitted that the burden is on the taxpayer to demonstrate to the Commissioner that the assessment is wrong and that the apportionment that the Respondent has done was not necessary and was not mandated by any part of the TCA 1997. Counsel submitted that the Appellant's contrary submissions were not convincing in light of the provisions of section 544 of the TCA 1997. Counsel submitted that the Appellant was not convincing in his explanation of how the special rules that deal with wasting assets and the special rules that deal with capital allowances can be applied properly because they cannot really be applied to an asset which comprises elements that are not wasting and elements that are not subject to capital allowances.

74. Counsel submitted that for the above stated reasons, the Respondent submits that the TCA 1997 mandates and permits the apportionment for the purposes of computing a chargeable gain and that is what the Respondent has done. By doing this it leads to a situation where a loss accrues that cannot be applied or carried over or availed of by the taxpayer in the computation of the chargeable gain and it results in a chargeable gain which is higher than the gain contended by the taxpayer.

Material Facts

75. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

    75.1. In ████████ the Partnership was formed;

    75.2. On ██████████ the Partnership acquired lands at ████████████ and built and developed the PCC at a total cost of €23,023.400 which included integrated plant and machinery at a cost of €5,506,195;

    75.3. In ███ the Partnership disposed of part of the property and this triggered a capital loss in the amount of €837,230. There was then a remaining base cost of €19,186,166;

    75.4. In ███ and ███ additional capital allowances in the amount of €455,853.87 were made. The base cost rose to €19,642,020. The plant and machinery qualified in full for capital allowances and the Appellant claimed his proportionate share of the available capital allowances in his income tax returns;

    75.5. On ████████████ the Partnership entered a contract for the sale of the remainder of the property to a third party for the sale price of €20,000,000. There

was no apportionment of the sale price as between land and plant and machinery specified in the contract. The disposal under the contract concluded in ████ ███;

75.6. On 1 December 2023 the Respondent issued a Notice of Amended Assessment and raised a charge to CGT against the Appellant in the amount of €131,264;

75.7. On 21 December 2023 the Appellant submitted his Notice of Appeal to the Commission.

Analysis

76. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

77. The jurisdiction of a Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:

> "*The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation*".

78. The Commissioner refers to the judgment in *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

> " ………………………. *Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions* …".

79. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court

case of *Menolly Homes Ltd v Appeal Commissioners and Anor*. [2010] IEHC 49, ("*Menolly*") wherein at paragraph 22, Charleton, J. stated:

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

80. The Commissioner also refers to paragraph 12 of the case of *Menolly*, wherein Charleton. J, stated:

> "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...".*

81. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee*, wherein Murray, J. stated at paragraph 76:

> "*The jurisdiction of the Appeal Commissioners ………. is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."*

82. The Commissioner refers to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, ["*Doorley*"] in which Kennedy CJ stated:

"………………………*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 applicable.*"

83. Further the Commissioner refers to the judgment in *Doorley* at page 765 in which Kennedy CJ stated:

"The duty of the Court, as it appears to me, is to reject any a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms on the alleged subject of taxation".

84. Further the Commissioner refers to the judgment in *Doorley* in which Kennedy CJ stated:

"*For no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to acts of parliament so far as they can be applied without violated the proper character of taxing acts to which I have referred."*

85. All material submitted to the Commission has been assessed by the Commissioner before making this determination.

86. Counsel for the Respondent submitted that the issue to be determined by the Commissioner is which method of calculation of CGT is correct by reference to the statutory provisions that are relevant in calculating a capital gain and then CGT.

87. Section 545 of the TCA 1997 provides that:

(1)Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no chargeable gain shall accrue on its disposal.

(2)The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts.

(3)Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain.

The above provision provides inter alia that "*The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts*".

88. Section 544(5) of the TCA 1997 provides:

For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure and the method of apportionment adopted, shall, subject to this Chapter, be just and reasonable.

It is clear from the above provision that where and when an apportionment is "*necessary*" an apportionment shall be done under the provisions of section 544(5) of the TCA 1997 and that the apportionment shall be just and reasonable.

89. The Respondent's position is that you cannot treat the consideration for the land and buildings as if it were one unified amount because they are different and therefore different rules apply to the plant and machinery portion of it and to the land portion of it. Counsel for the Respondent submitted that is why an apportionment under section 544(5) of the TCA 1997 is necessary in this situation. Counsel for the Respondent submitted that there is no provision anywhere in the TCA 1997 that deals directly with this kind of situation, where you have an asset which consists both of a portion which is subject to capital allowances or upon which capital allowances have been claimed and a portion which is not, or a portion which is a wasted asset and a portion which is not a wasting asset, but which is comprised in one single disposal or one single asset for the purpose of disposal. Counsel for the Respondent also submitted that there was no express provision in the TCA 1997 which expressly mandated the split/apportionment of the consideration into two distinct tranches.

90. Counsel for the Appellant submitted that the apportionment carried out by the Respondent is not enabled, provided for and identified as being *necessary* in the TCA 1997.

91. Section 552 of the TCA 1997 provides inter alia that

(1)Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to –

(a)the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b)the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset,

being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c)the incidental costs to the person of making the disposal.

92. Having regard to the submissions made on behalf of the Appellant, it appears that the Appellant and his advisors adopted the above approach in calculating the Appellant's CGT liability herein.

93. Section 554 of the TCA 1997 provides *inter alia* that:

    (1)There shall be excluded from the sums allowable under section 552 as a deduction any expenditure allowable as a deduction in computing the profits or gains or losses of a trade or profession for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains, and this subsection shall apply irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

94. Counsel for the Appellant submitted that the above provision is the basic rule brought in by section 554 of the TCA 1997 and that reading it on its own one might interpret it as meaning that it requires the exclusion from the sums to be allowable as a deduction in respect of which a capital allowance was claimed. Counsel for the Appellant submitted that the rule in section 554 of the TCA 1997 is qualified by/in section 555 of the TCA 1997 which clarifies that it does not cover expenditure in respect of which capital allowances are claimed except if a person is computing a *loss*.

95. Section 555 of the TCA 1997 - *Restriction of losses by reference to capital allowances and renewals allowances* provides *inter alia* that:

    (1)Section 554 [Exclusion of expenditure by reference to income tax] shall not require the exclusion from the sums allowable as a deduction under section 552 of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made but, in the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of that expenditure.

96. Counsel for the Appellant submitted that the effect of the above provision is that one is back to the status as at the end of section 552 of the TCA 1997, because although section 554 of the TCA 1997 introduced the possibility that in deducting the acquisition cost or expenses, that one would not be entitled to deduct one's expenses in respect to which capital allowances were claimed in calculating the gain, section 555 of the TCA 1997 provides that that rule *"….doesn't apply in the case of capital allowances when you are trying to calculate the gain. But if you were calculating a loss that would be different*"[15]. Counsel for the Appellant further submitted that when one applies the provisions of sections 554 and 555 of the TAC 1997 to the facts of this case, one is left in the position where one was at the end of section 552 of the TCA 1997; in that one has a single asset of land and buildings with integrated plant and machinery which is sold and one is trying to calculate the gain on it and that because there was a gain on that disposal, one is entitled to deduct all of the acquisition costs.

97. Counsel for the Respondent submitted that one must separate out for tax purposes the consideration. Counsel submitted that this method was not expressly mandated by any statutory provision but that the computational rules cannot be followed properly unless the consideration is separated into two tranches because otherwise a rule would be applied to an asset which has more to it than the rule is designed to accommodate.

98. The Contract for Sale described the nature and extent of what was intended to be disposed under the contract as:

> *"Particulars and Tenure: ALL THAT AND THOSE part of the lands at , being the property known as , situate at , comprising:*
>
> *FIRSTLY: 1.753 hectares or thereabouts being the property more particularly delineated on Map No. 1 attached to a Deed of Conveyance dated between………………and thereon with the letter "A" and*
>
> *SECONDLY: 0.04107 hectares or thereabouts being the property more particularly delineated on Map No. 2 attached to the said Deed of Conveyance………….. and thereon outlined in red on the map attached hereto,*
>
> *and with the benefit of the easements and privileges specified in the Lease of Easements dated and made between……..".*

[15] Transcript: 43.8

The Contract for Sale was for the entire of the building and the land. There was no apportionment provided for under the contract.

99. Counsel for the Respondent submitted that you cannot treat the consideration as if it were one unified amount because they are different and therefore different rules apply to the plant and machinery portion of it and to the land portion of it. Counsel submitted that is why an apportionment under section 544(5) of the TCA 1997 is necessary in this situation. Counsel further submitted that there is no provision anywhere in the TCA 1997 that deals directly with this kind of situation, where you have an asset which consists both of a portion which is subject to capital allowances or upon which capital allowances have been claimed and a portion which is not, or a portion which is a wasted asset and a portion which is not a wasting asset, but which is comprised in one single disposal or one single asset for the purpose of disposal.

Statutory Interpretation

100. It is prudent to take cognisance of the guidance from the Superior Courts on the interpretation of statutory provisions. The relevant principles have been examined in the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders v The Revenue Commissioners* [2020] IESC 60, and which were summarised by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

> *(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."

101. Counsel for the Appellant submitted that "*necessary*" in section 544(5) of the TCA 1997 did not in and of itself sanction an apportionment but that it must be mandated elsewhere. Examples of definitions of "*necessary*" in the *Oxford English Dictionary* are "*Indispensable, vital, essential; requisite. …..";* "*Of an action: that needs to be done; that is done in order to achieve the desired result or effect. if necessary: if required by the circumstances.*"; "*Inevitably determined or produced by a previous state of things; occurring as the next logical step in a sequence of events.*"

102. Counsel for the Appellant highlighted that a "*loss*" required different treatment at section 555 of the TCA 1997. Examples of definitions of *"loss*" in the *Oxford English Dictionary* are: "*The fact of losing (something specified or contextually implied)*"; "*Failure to take advantage or make good use (of time, etc.).*"; "*Failure to gain or obtain.*"; "*Diminution of one's possessions or advantages; detriment or disadvantage involved in being deprived of something, or resulting from a change of conditions; an instance of this. (Opposed to gain.)*"

103. In adopting the guidance from the Superior Courts which is succinctly set out by McDonald. J in *Perrigo*,[16] *"(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;..*" and applying that guidance to the interpretation of "*necessa*ry" (definitions are cited in the earlier paragraph) it is clear that "*necessary*" means, something that is done or required to be done in order to achieve the desired result or effect and/or which is determined by a previous state of things as the next logical step in a sequence of events. Counsel for the Appellant submits that the word "*necessary*" stated in section 544(5) of the TCA 1997 does not mean that the apportionment of the sale consideration into two tranches which the Respondent proposes is the correct method, is provided for by section 544(5) of the TCA 1997, but submits that any double apportionment must be authorised, enabled and provided for elsewhere in the TCA 1997 and that, if so enabled and authorised then under the provisions of section 544(5) of the TCA 1997 such apportionment having been mandated as being *necessary* under another provision of the TCA 1997 shall have effect. Counsel for the Appellant submits that the apportionment is not elsewhere mandated and therefore cannot be considered to be "*necessary*". Counsel for the Respondent submits *inter alia* that there are compelling reasons to be found within the Act as a whole which allows the Respondent to perform the two step computation/apportionment as otherwise the Appellant and other taxpayers would be able to recycle a loss upon which capital allowances have already been claimed.

104. In applying the guidance from *Perrigo* to the interpretation of "*loss*" (definitions are cited in the earlier paragraph) it is clear that "*loss*" means, failure to gain and/or a diminution of one's possessions and/or something that is opposed to a gain. Counsel for the Appellant submitted that the effect of section 555 of the TCA 1997 is that the provisions of section 554 of the TCA 1997 are excluded from applying to scenarios where taxpayers, such as

[16] *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552. Paragraph 74(a)

the Appellant are computing a gain for the purposes of calculating CGT and it is clear from the definitions of "*loss*" that a *gain* is something which is opposed to a loss.

105. In applying the guidance from *Perrigo*[17] to the words "*necessary*" and "*loss*", the Commissioner finds that the said statutory provisions are plain and their meaning is self-evident, and there are no compelling reasons to be found within the Act as a whole which would mean that the ordinary, basic and natural meaning of the words should not prevail.

106. In applying the guidance from *Perrigo 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; and

(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;

to the words *"necessary" and "loss",* it is found that there is no ambiguity and imprecision in their meaning.

107. In applying the guidance from *Perrigo that:*

(b)the meaning of the words used in the statutory provision must be seen in context and that "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that",... and

(e) [I]n 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; and

(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;

to the to the words "*necessary*" and *"loss*", it is found that, there is no contextual setting and/or environment either immediate and proximate or further than that which would alter the interpretation of the words which are not ambiguous and/or imprecise and a literal interpretation of the provision would not lead to an absurdity of failing to reflect what the true intention of the legislature is as is apparent from a reading of the TCA 1997 as a

[17] Ibid

whole and therefore the *literal interpretation of the words "necessary*" and *"loss*" should not be rejected.

108. In applying the guidance from *Perrigo*, *(f)* that relates to provisions which provide for relief or exemption from taxation which 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"*

    and having regard to the guidance from *Perrigo* and the facts herein and the submissions made by the parties, the Commissioner is not so satisfied that the Respondent's claimed entitlement, enablement, permission and mandate to apportion the consideration for the sale of the land and buildings into two distinct and separate tranches and perform two separate computations for CGT purposes thereon is provided for in the TCA 1997. The Commissioner refers to the judgment of Kennedy CJ, which provides that "[*T]he 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" [emphasis added].* The Commissioner finds that the method adopted by the Respondent of splitting into two separate tranches the sale consideration in order to carry out two separate computations of the gain for the purposes of calculating CGT thereon was an action which served to enlarge the operation of the provisions of the taxing statutes beyond what the statute and the Oireachtas clearly and without doubt and express terms has provided for.

109. The Commissioner having assessed all before the Commission finds that there is no express statutory provision in the TCA 1997 which enables the Respondent to adopt the approach employed by it.

110. The Commissioner refers to the submission made by Counsel for the Respondent that the issue to be determined by the Commissioner is which method of calculation of CGT is correct by reference to the statutory provisions that are relevant in calculating a capital gain and then CGT. The Commissioner finds that the method adopted by the Respondent is not expressly provided for in statute and is therefore incorrect.

Determination

111. Accordingly, the Commissioner finds that the Appellant has discharged the burden of proof as the Commissioner does not accept that the computation and the assessment to CGT made by the Respondent against the Appellant was done in adherence and in compliance with the provisions of the TCA 1997.

112. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is successful and further to the provisions of section 949AK (1) of the TCA 1997 which provides inter alia as follows:

> *(1)In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that—*
>
> *(a)an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly,*

the Commissioner finds that the assessment to CGT against the Appellant be reduced to €10,697 as set out in the computation submitted for and on behalf of the Appellant.

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

Notification

114. 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

115. 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.

Leonora B. Doyle
Appeal Commissioner
12 December 2024

APPENDIX I

Section 544 of the TCA 1997 - Interpretation and general (Chapter 2).

(1)In this Chapter, "renewals allowance" means a deduction allowable in computing profits, gains or losses for the purposes of the Income Tax Acts by reference to the cost of acquiring an asset in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.

(2)References in this Chapter to sums taken into account as receipts or as expenditure in computing profits, gains or losses for the purposes of the Income Tax Acts shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession or employment are not chargeable to income tax or that losses are not allowable for those purposes.

(3)References in this Chapter to income or profits charged or chargeable to tax include references to income or profits taxed or, as the case may be, taxable by deduction at source.

(4)No deduction shall be allowable in a computation under the Capital Gains Tax Acts more than once from any sum or from more than one sum.

(5)For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be just and reasonable.

(6)Section 557 and the other provisions of the Capital Gains Tax Acts for apportioning on a part disposal expenditure which is deductible in computing a gain shall be operated before the operation of and without regard to –

(a)section 1028(5),

(b)section 597, and

(c)any other provision making an adjustment to secure that neither a gain nor a loss accrues on a disposal.

(7)Any assessment to income tax or any decision on a claim under the Income Tax Acts, and [any determination on an appeal] under the Income Tax Acts against such

an assessment or decision, shall be conclusive in so far as under any provision of the Capital Gains Tax Acts liability to tax depends on the provisions of the Income Tax Acts.

(8)In so far as the provisions of the Capital Gains Tax Acts require the computation of a gain by reference to events before the 6th day of April, 1974, all those provisions, including the provisions fixing the amount of the consideration deemed to be given on a disposal or an acquisition, shall apply except in so far as expressly excluded.

Section 545 of the TCA 1997 – Chargeable gains.

(1)Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no chargeable gain shall accrue on its disposal.

(2)The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts.

(3)Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain.

Section 552 of the TCA 1997 - Acquisition, enhancement and disposal costs.

(1)Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to –

(a)the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b)the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c)the incidental costs to the person of making the disposal.

(1A) (a)In this subsection “rate of exchange” means a rate at which 2 currencies might reasonably be expected to be exchanged for each other by persons dealing at arm’s length.

(b)For the purposes of subsection (1) where a sum allowable as a deduction was incurred in a currency other than the currency of the State, it shall be expressed in terms of the currency of the State by reference to the rate of exchange of the currency of the State for the other currency at the time that the sum was incurred.

(1B) (a)In this subsection—

“connected person” has the same meaning as in section 10;

“debt” means a debt or debts, in respect of borrowed money, whether incurred by the person making the disposal of an asset or by a connected person;

“group” and “member of a group” have the same meanings, respectively, as in section 616.

(b)Where—

(i)the amount or value of the consideration referred to in subsection (1)(a), or

(ii)the amount of any expenditure referred to in subsection (1)(b),

was defrayed either directly or indirectly out of borrowed money, the debt in respect of which is released in whole or in part (whether before, on or after the disposal of the asset), that amount shall be reduced by the lesser of the amount of the debt which is released or the amount of the allowable loss which, but for this subsection, would arise.

(c)For the purposes of paragraph (b), the date on which the whole or part of a debt is released shall be determined on the same basis as the release of the whole or part of a specified debt is treated as having been effected in section 87B(4).

(d)Where a debt is released in whole or in part in a year of assessment after the year of assessment in which the disposal of the asset takes place (such that the release of the debt was not taken into account in the computation of a chargeable gain or allowable loss on the disposal of the asset) then for the purposes of the Capital Gains Tax Acts a chargeable gain, equal to the amount of the reduction that would have been made under paragraph (b) had the release been effected in the year of assessment in which the disposal of the asset took place, shall be deemed to accrue to the person who disposed of the asset on the date on which the debt is released but, where the disposal is to a connected person, any gain under this subsection shall be treated for

the purposes of section 549 (3) as if it accrued on the disposal of an asset to that connected person.

(e)A chargeable gain under paragraph (d) shall not be deemed to accrue where, had a gain accrued on the disposal of the asset, it would not have been a chargeable gain or it would have qualified for relief from capital gains tax.

(f)Where a debt released is in respect of money borrowed by a member of a group of companies from another member of the group, the amount or value of the consideration referred to in subsection (1)(a), or the amount of any expenditure referred to in subsection (1)(b), shall not be reduced by the amount of that debt which is released under paragraph (b) or a chargeable gain in respect of the release of that debt shall not be deemed to accrue under paragraph (d).

(2)For the purposes of the Capital Gains Tax Acts as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with –

(a)in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b)in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

(3)(a)Where –

(i)a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under subsection (1) in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

(ii)that expenditure was defrayed out of borrowed money,

(iii)the company charged to capital all or any part of the interest on that borrowed money referable to a period ending on or before the disposal, and

(iv)the company is chargeable to capital gains tax in respect of the gain,

then, the sums so allowable under subsection (1) shall include the amount of that interest charged to capital except in so far as such interest has been taken into account for the purposes of relief under the Income Tax Acts, or could have been so taken into account but for an insufficiency of income or profits or gains.

(b)Subject to paragraph (a), no payment of interest shall be allowable as a deduction under this section.

(4)Without prejudice to section 554, there shall be excluded from the sums allowable as a deduction under this section any premium or other payment made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

(5)In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which the person became absolutely entitled as legatee or as against the trustees of settled property –

(a)any expenditure within subsection (2) incurred by the person in relation to the transfer of the asset to the person by the personal representatives or trustees, and

(b)any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction under this section.

<u>Section 554 of the TCA 1997 -Exclusion of expenditure by reference to income tax</u>.

(1)There shall be excluded from the sums allowable under section 552 as a deduction any expenditure allowable as a deduction in computing the profits or gains or losses of a trade or profession for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains, and this subsection shall apply irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

(2)Without prejudice to subsection (1), there shall be excluded from the sums allowable under section 552 as a deduction any expenditure which, if the assets or all the assets to which the computation relates were, and had at all times been, held or used as part

of the fixed capital of a trade the profits or gains of which were chargeable to income tax, would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of the Income Tax Acts.

<u>Section 555 of the TCA 1997 -Restriction of losses by reference to capital allowances and renewals allowances</u>.

(1)Section 554 [Exclusion of expenditure by reference to income tax] shall not require the exclusion from the sums allowable as a deduction under section 552 of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made but, in the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of that expenditure.

(2)Where the person making the disposal acquired the asset –

(a)by a transfer to which section 289(6) or 295 applies, or

(b)by a transfer by means of a sale in relation to which an election under section 312(5) was made,

then, this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except in so far as any loss to the transferor was restricted under those sections) been made to the person making the disposal (being the transferee) and, where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection may be taken into account in relation to the transferor shall also be taken into account in relation to the transferee, and so on for any series of transfers before the disposal.

(3)The amount of capital allowances to be taken into account under this section in relation to a disposal includes any allowances to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event, and of any balancing charge to which effect might have been so given but for the making of an election under section 290.

(4)Where the disposal is of an asset of machinery or plant that is, or has previously been, the subject of a lease on the terms described in section 299(1), the amount of capital allowances to be excluded from the sums allowable as a deduction shall also

include the capital allowances that would have been, or may have been, made in respect of that expenditure, but for the transfer of that burden of wear and tear to the lessee.

Section 557 of the TCA 1997 - Part disposals.

(1)Where a person disposes of an interest or rights in or over an asset and, generally wherever on the disposal of an asset, any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 552(1) are attributable to the asset shall be apportioned both for the purposes of the computation under this Chapter of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of.

(2)Such portion of the expenditure shall be allowable as a deduction in computing under this Chapter the amount of the gain accruing on the disposal as bears the same proportion to the total of those sums as the value of the consideration for the disposal bears to the aggregate of that value and the market value of the property which remains, and the balance of the expenditure shall be attributed to the property which remains undisposed of.

(3)Any apportionment to be made in pursuance of this section shall be made before the operation of section 555 and, if after a part disposal there is a subsequent disposal of an asset, the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4), be those referable to the sums which under paragraphs (a) and (b) of section 552(1) are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under that section.

(4)This section shall not be taken as requiring the apportionment of any expenditure which on the facts is wholly attributable to the asset or part of the asset which is disposed of or wholly attributable to the asset or part of the asset which remains undisposed of.

Section 560 of the TCA 1997 - Wasting assets.

(1)In this Chapter –

"the residual or scrap value", in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section;

"wasting asset" means an asset with a predictable life not exceeding 50 years, but so that –

(a)freehold land shall not be a wasting asset whatever its nature and whatever the nature of the buildings or works on that land,

(b)"life", in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal,

(c)plant [(other than plant that is a work of art)] and machinery shall in every case be regarded as having a predictable life of less than 50 years, and in estimating that life it shall be assumed that its life will end when it is finally put out of use as being unfit for further use and that it will be used in the normal manner and to the normal extent and will be so used throughout its life as so estimated, and

(d)a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Revenue [Commissioners;

"work of art" includes a picture, print, book, manuscript, sculpture, piece of jewellery, furniture or similar object;

(2)The question as to what is the predictable life of an asset, and the question as to what is its predictable residual or scrap value, if any, at the end of that life, shall, in so far as those questions are not immediately answered by the nature of the asset, be taken in relation to any disposal of the asset as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

(3)In the computation under this Chapter of the gain accruing on the disposal of a wasting asset, it shall be assumed –

(a)that any expenditure attributable to the asset under section 552(1)(a), after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nil at the end of its life, and

(b)that any expenditure attributable to the asset under section 552(1)(b) is written off at a uniform rate from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nil at the end of its life.

(4)Where any expenditure attributable to the asset under section 552(1)(b) creates or increases a residual or scrap value of the asset, the residual or scrap value to be deducted under subsection (3)(a) shall be the residual or scrap value so created or increased.

(5)Any expenditure written off under this section shall not be allowable as a deduction under section 552.

Section 561 of the TCA 1997 - Wasting assets qualifying for capital allowances.

(1)Subsections (3) to (5) of section 560 shall not apply in relation to a disposal of an asset –

(a)which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used solely for the purposes of a trade or profession and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or (b) of section 552(1), or

(b)on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

(2)In the case of the disposal of an asset which in the period of ownership of the person making the disposal has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for part of that period, or which has otherwise qualified in part only for capital allowances –

(a)the consideration for the disposal and any expenditure attributable to the asset under paragraph (a) or (b) of section 552(1) shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,

(b)the computation under this Chapter of the gain on the disposal shall be made separately in relation to the apportioned parts of the expenditure and consideration,

(c)subsections (3) to (5) of section 560 shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the

purposes of the trade or profession or to the expenditure qualifying for capital allowances,

(d)if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on that person, that apportionment shall be employed for the purposes of this section, and

(e)subject to paragraph (d), the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a).

APPENDIX II

Guidelines

Tax and Duty Manual: Part 19-02-12: "Restriction of losses by reference to capital allowances and renewal allowances" (July 2020)

Tax and duty Manual: Part 19-02-17: "Wasting assets qualifying for capital allowances" (July 2022)