THE COURT OF APPEAL

Record Number: [2022/262]

High Court Record Number: [2017/196 R.]

Donnelly J. **Neutral Citation Number [2023] IECA 160**

Noonan J.

Haughton J.

IN THE MATTER OF A CASE STATED PURSUANT TO SECTION 941 OF THE TAXES CONSOLIDATION ACT, 1997

BETWEEN/

COLM MURPHY

APPELLANT

-AND-

THE REVENUE COMMISSIONERS

RESPONDENT

JUDGMENT of Mr. Justice Robert Haughton delivered on the 21st day of June, 2023

1. This is an appeal by the appellant against a judgment of Pilkington J. dated 4 June 2020, and a follow up "Note" in respect of the judgment dated 18 July 2020, and her Order perfected on 2 November 2022 in respect of a Case Stated by the Circuit Court.

2. This judgment concerns a preliminary issue, namely whether the appellant should be permitted to pursue in this Court an appeal based primarily on submissions related to section 956 of the Taxes Consolidation Act, 1997 (as amended) ("**TCA 1997**"). A similar preliminary issue arises in respect of the appellant's attempt to raise a "procedural fairness" issue around whether, following suspension of the respondents' audit and commencement of an "enquiry" notified to him in two letters of 18 May 2009 the respondent thereafter could not resume the audit and make new assessments (as it purported to do in September and October 2013) while, it is asserted, the Inspector's powers remained suspended. The respondent contends *inter alia* that the s. 956 issue and the "procedural fairness" issue were not the subject of the Case Stated, and that in any event both issues did not fall within the jurisdiction of the Appeal Commissioners, and hence the Circuit Court or any appellate court.

Background

3. The matter came before the High Court by way of a Case Stated pursuant to s. 941 of the TCA 1997 from a determination by His Honour Judge Francis Comerford dated 28 February 2017. Judge Comerford had dismissed an appeal by the appellant from a determination made by the Appeal Commissioners on 3 March 2015, which determination approved the following assessments made by the respondent: -

TAX	PERIOD	AMOUNT
Income Tax	2006	€149,687
CGT	2006	€98,137
VAT	01/04/05 - 31/08/05	€49,160
VAT	01/01/06 - 28/02/06	€4,176

VAT	01/09/06 - 31/10/06	€1,334
Total		**€302,494**

4. The Income Tax Assessment arose pursuant to a Notice of Amended Assessment of 27 September 2013. The Capital Gains Tax Assessment arose pursuant to a Notice of Assessment of 26 September 2013; and the VAT Assessments arose pursuant to a Notice of Assessment of 2 October 2013.

5. In terms of the background to the raising of the assessments, the respondent first contacted the appellant in January 2008 concerning outstanding income tax returns for the years 2006 and 2007. Following this an Amended VAT 3 return was submitted in March 2009 for the period April to August 2005, and the appellant sought a VAT repayment for that period. The income tax returns were also filed for 2006 and 2007 on 30 March 2009, showing liabilities of €4,669.72 and €4,545.42 respectively. As matters transpired these income tax returns significantly understated the appellant's liabilities.

6. An audit letter was then issued by the respondent on 6 April 2009, and an audit commenced on 29 April 2009. On 29 April 2009 the appellant withdrew the claim for a VAT Refund. The appellant made three prompted disclosures in respect of his returns, one on 29 April 2009, and two on a Zoom meeting on 13 May 2009. The last of these asserted a tax liability in the amount of €204,290, encompassing liabilities for Income Tax and Capital Gains Tax and VAT.

7. By the first letter dated 18 May 2009 from the respondent's Tralee office District Manager the appellant was informed that the writer was "suspending the Audit for the present". By a further letter of 18 May 2009 from the respondent's Cork office Regional Investigations Branch the appellant was advised (so far as relevant) as follows: -

"I wish to advise you that your tax affairs are currently under Revenue Enquiry.

This enquiry supersedes all audits or other related checks that Revenue may have initiated.

Please note that this enquiry will be conducted under the relevant provisions of the Taxes Consolidation Act 1997, as well as the Code of Practice for Revenue Auditors and the Revenue Customer Service Charter. These publications are available on request from any Revenue Office or from the Revenue website at www.revenue.ie."

It is these letters that form the basis of the submission that the appellant seeks to make that while the enquiry was continuing the inspector's power to continue the audit or raise new or amended assessments was suspended, and that the appellant should have been given "confirmation …in clear terms" by the Regional Investigations Branch of any change in status of the enquiry or resumption of audit.

8. There is no indication of how the Revenue Enquiry proceeded in pursuing the 'enquiry'.

9. In May 2013 the appellant's office was informed verbally by the respondents that the audit was set to continue on 20 May 2013, and two named inspectors would be attending at the appellant's office in Kenmare.

10. By letter dated 19 May 2013 sent by the appellant to the respondent's Tralee office the appellant protested against resumption of the audit on the basis of inordinate and inexcusable delay. He further contended that the audit could not continue because over four years had elapsed since it had been suspended, and further because of the lapse of time since the periods the subject matter of the assessments. He asserted his belief "that the matter should be referred to the Appeal Commissioners" and he suggested questions that they should be asked to answer in relation to the resumption of the audit due to the lapses in time.

11. "The matter" was not in fact referred by the respondents to the Appeal Commissioners, and on 20 May 2013 two of the respondent's inspectors attended at the appellant's office in Kenmare and again informed him that the audit was continuing, and that this was on foot of the disclosures made by the appellant in 2009. Of note in this regard is a letter dated 23 May 2013 sent by Mr. Murphy to the respondent's Tralee office in which he states –

> "Dear Sirs
>
> I believe it is now appropriate for me to bring all my tax affairs up to date.
>
> I am sure there is very little, if any, money due since the period 1st January 2008 to date but would be grateful if you would indicate the years since then for which returns are due and send me the appropriate returns for completion please."

It is noteworthy that this letter makes no further protest or complaint about the resumption of the audit in respect of the earlier periods, or the absence of any formal notice whether from the respondent's Regional Office or otherwise, and does not pursue further the appellant's belief that the resumption of the audit after delays should be referred to the Appeal Commissioners.

12. On 27 September 2013 the respondent's Tralee office wrote to Mr. Murphy, and the relevant part of that letter reads: -

> "Dear Mr. Murphy
>
> I refer to your meeting with Billy Thompson & I on 20/05/13 in relation to the ongoing Audit of your tax affairs.
>
> Having consulted with colleagues in Revenue Legislation Services & Revenue Solicitor's Office, the Revenue opinion is that despite the time elapsed since the commencement of the Audit there is an entitlement under Section 955 Taxes Consolidation Act to raise & amend

assessments outside the 4 year limit where the relevant returns filed *did not contain a full & true disclosure of all material facts necessary for the making of an assessment for a chargeable period.*

On this *[sic]* basis of the additional liability disclosed by you & your accountant Kevin O'Reilly during the Audit meetings of 29/04/09 & 13/05/09 I have now raised the following assessments, amended assessments or Inspector's Estimates as appropriate." (my emphasis)

13. I pause here to explain that s. 955 concerns amendment of and the time limit for assessments. Under s. 955(2)(a) where a chargeable person has delivered a return "and has made in the return a full and true disclosure of all material facts" for a chargeable period then "an assessment for that period, or an amendment of such assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered". However, s. 955(2)(b) qualifies this, and provides that nothing in the subsection shall prevent the amendment of an assessment *inter alia* "(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a)" or "(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered", or "(iv) to correct an error in calculation".

14. The letter of 27 September 2013 then set out that pursuant to the disclosures in April/May 2009 there would be an amended assessment to income tax for 2006 based on revised profit figures disclosed by the appellant on 13/05/09, a CGT assessment for 2006 "in relation to the disposal of a site for 1 million", and VAT Inspector's estimates in respect of VAT for periods April-August 2005, January/February 2006, and September/October 2006.

15. The appellant responded by letter of 30 September 2013, and in the second paragraph he states

–

"I have considered Section 966 of the Taxes Consolidation Act 1997 and it is clear that you have no entitlement to raise and/or amend assessments now.

I repeat that any attempt by the Revenue to proceed against me in respect of the years the subject of the assessment will be resisted on the basis that it is barred by the passage of time."

16. The appellant's reference to s. 966, which concerns High Court proceedings for the collection of income tax and could not have had any relevance, seems to be an error. Given that this letter was in reply to the respondents' letter which raised s. 955, and that s. 955(2) became the focus of the appeal to the Circuit Court, it seems likely that the appellant intended to refer to s. 955.

It was not suggested in argument before us that in referring to "Section 966" the appellant had meant to rely on s. 956[1], or in particular subsection (1)(c) of that section (more fully set out in foot note 1) which prevents the respondent pursuing "enquiries and actions" against a chargeable person for any chargeable period at any time after the expiry of the period of four years commencing at the end of the chargeable period. However this provision is also qualified – it applies "… unless at that time the Inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner".

The appellant in his letter also raised issues in relation to the figures set out in Revenue's letter of 27 September 2013, and indicated his intention to appeal.

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[1] Section 956(1)(a) allows an inspector of taxes to accept in whole or in part any statement or particular contained in a return, and to assess income tax and CGT by reference to same, and s. 956(1) subparagraphs (b) and (c) state:

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

(i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to section 955(2), from amending or further amending as assessment in such manner as he or she considers appropriate.

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

17. As indicated earlier, Notices of Assessment issued on 26 and 27 September 2013 and 2 October 2013 respectively, and by three letters all dated 23 October 2013 the appellant appealed these assessments to the Appeal Commissioners.

18. On 15 January 2014 the respondent's Tralee office wrote at some length to the appellant, dealing with various matters, including the correction of figures in the assessment notices. In response to the appellant's contention that the assessments were statute barred, and the appellant's assertion that he "did not receive a response to [his] letter of 19/5/13", the respondents stated that "Given that the content was *[sic]* surfaced during our meeting of 20/5/13 and discussed in detail on 1/10/13 we took the content to have been addressed", and then confirmed that they were entitled to continue with the audit which had been "suspended while the seriousness of the tax underpayments were under consideration". The letter continued –

> "(5) Yes, Revenue can rely on assessments raised as a consequence of the audit. As I explained on 1/10/13, and as accepted by you then, under Section 955 of the Taxes Consolidation Act 1997, as amended, an Inspector is entitled to raise an assessment where underpayments arise as a consequence of a taxpayer not filing full and true returns. On 13/5/09 you disclosed tax underpayments and omissions therefore the general four-year time limit is suspended. We are entitled to raise assessments notwithstanding that there has been a delay in doing so. In our discussions of 1/10/13 you accepted this point and you are no longer contending that the assessments are time barred and invalid. It is your contention that the delay from 13/5/09 until 20/5/13 is unreasonable and gives you grounds not to pay the tax."

Further on the letter stated –

> "A refusal of Appeal: I have considered your case at length and while I understand your position on the time lag, this does not provide a valid basis for appeal. The quantum of the

assessments is not in question – they reflect your own disclosure/figures and you indicated on 1/10/13 that you accepted the accuracy of the assessments and I appreciate this cooperation from you. Neither is there any legislative argument as you accepted that Section 955 TCA 1997 was no longer at issue – your issue being the time lag. There is therefore no business I can seek to place before an Appeal Commissioner for decision. Consequently, I have concluded that I am obliged under Section 933 1(b) TCA 1997 to refuse your appeals. …"

In its concluding paragraphs the letter set out the Revenue Complaints Procedure and attached the relevant Revenue Leaflet, and also set out the appellants Right of Appeal, within 15 days from issue of the letter, to appeal the refusal of entitlement to appeal.

It will be noted that this response addressed s. 955 issues raised by the appellant, and the letter makes no mention of s. 956 (or any other section of the TCA 1997).

19. By his letter of 17 January 2014 the appellant responded in detail to each item in the Revenue's letter of 15 January, and again raised his complaint of delay and his contention that because of the existence of a Revenue Enquiry the audit could not proceed. While he conceded that "the quantum of assessment may not be in question" he contended that the right of the respondent to raise an assessment was in question. His letter does not mention s. 956.

20. The respondents rejoined in their letter of 20 January 2014, and in this audit manager Mr. Thompson stated *inter alia* –

"a) For the record I wish to clarify that the audit has been resumed and you may take this as having occurred from when we communicated with you on 29/4/13 and then met you on 20/5/13. I believe it is correct to say we advised you on 20/10/13 that the purpose of our visit was to resume the Revenue Audit but first of all to meet you to establish the position as of

that time and then proceed forward. It was thereby implied that the Revenue Enquiry was not proceeding. For the record I can confirm that is the position and you are correct to liaise with us to advance/conclude the Revenue Audit."

21. On the same date the appellant responded including commenting that "…I should have been informed by the Regional Investigations Branchy in Cork that the Revenue Enquiry was not proceeding." A meeting between the appellant and Revenue's inspectors then took place on 22 January 2014 following which the appellant wrote on 29 January 2014 pursuing his appeal. In that letter the appellant stated his belief that what needed to go before the Appeal Commissioners was "the interpretation of Section 955…and its application to my case." He stated –

"My argument that a "return" for the purposes of s. 955 of the Taxes Consolidation Act 1997 includes all information given to the audit up until May 2013."

There was no mention of s. 956 in this letter or the earlier correspondence.

22. The appellant received confirmation from Revenue on 20 January 2014 that his appeal was being admitted "against our interpretation of Section 955 *[emphasis added]* of the Taxes Consolidation Act 1997" in respect of the assessments at issue. In that letter Revenue stated –

"I understand but do not agree your contention that Revenue is prohibited under the four-year time limit to raise these assessments. It is my position that Section 955 allows for the raising of assessments where underpayments arise as a consequence of a taxpayer not filing full and true returns."

23. By determination dated 3 March 2015 the Appeal Commissioners confirmed the figures in the three assessments, with the correction identified in the respondent's correspondence, giving rise to a total liability for tax in the sum of €302,494.

24. The appellant further appealed to the Circuit Court sitting in Tralee, and that appeal was heard by Judge Comerford on 7 February 2017. The appellant appeared in person.

25. In his written judgment, delivered on 28 February 2017, Judge Comerford at para. 26 indicates that "… I am going to approach this decision on the basis that the right to appeal an assessment includes within it a right to say that the assessment doesn't exist." The appellant had argued that the respondent was estopped from making the assessments because he had not received appropriate confirmation that the enquiry had ended and the audit resumed – this now appears to have morphed into the procedural fairness argument raised before this Court. At para. 28 Judge Comerford indicated his view –

> "… that there is no absolute rule that estoppel by conduct cannot arise by reason of the actions of the Revenue Commissioners, nor is there a rule that the Appeal Commissioners or the Circuit Court are precluded by the limitations of the statutory appeal system from considering this issue."
>
> At para. 29 he determined that there was "… no rule of law prohibiting the raising of an assessment on foot of information obtained during an audit by reason of the fact that a Revenue Enquiry is in being."

26. Critically, in the first operative part of his decision he states –

> "31. I am of the view that even if the date of the assessments are deemed to be the 20th January, 2014 or some date thereafter, any contention that s. 955(2)(a) affords the Appellant relief is unsustainable. The appellant's arguments are couched on the basis that there is an absolute 4 year statute of limitations, and has no regard to very pronounced qualifications on the operation of the bar on the raising of assessment after the four-year period has expired. Taking just one point, the Appellant did not in his return in March 2009, make '*full and true*

disclosure of all material facts necessary for the making of an assessment'. The Appellant cannot succeed on the basis of s. 955(2)(a)."

27. On the assumption that there could in principle be an estoppel, the trial judge found that no estoppel existed, stating at para. 35 –

"… I am not satisfied that an estoppel sufficient to restrict the exercise by the Revenue Commissioners of their statutory obligations came into effect."

In relation to the error, which concerned the VAT Assessment, he found that this "error was readily apparent to the Appellant who caused a letter to be written on the 8 October, 2013 asking for clarification", and noted that the Revenue Commissioners before the Appeal Commissioners and the Circuit Court sought to have the relevant figure reduced from €51,065 to €49,160.

The Case Stated

28. The appellant then requested that the learned Circuit Court judge stated case pursuant to s. 941 of the TCA 1997. In acceding to that request the Circuit Court stated the following questions for consideration by the High Court: -

"(i) Was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that precluded the taking of any steps in a Revenue Audit, while a Revenue Enquiry was in being.

(ii) In respect of my ruling that assessments raised in this case were not prohibited by the terms of Section 955(2) of the 1997 Act, and in the proper construction of that Section 955, was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that any steps taken in the course of Revenue Audit, as at the time

when a Revenue Enquiry was in place, would only be deemed to take effect when effective notice was given that the Revenue Enquiry was no longer proceeding.

(iii) In respect of my ruling that assessments raised in this case were not prohibited by the terms of Section 955(2) of the 1997 Act, and in the proper construction of Section 955, was I correct in holding that the requirement that returns made by a taxpayer make full and material disclosure of all matters necessary to make an assessment is a pre-condition without which a taxpayer cannot rely upon any time limit imposed by Section 955 and that the disclosure of full details by way of prompted disclosure or otherwise in the course of a Revenue Audit, subsequent to the making of returns, does not satisfy this condition.

(iv) Was I correct in holding that the legal rules relating to the strike out of civil proceedings for gross and inordinate delay had no effective application in this Revenue Appeal.

(v) Was I correct in holding that it was not within the scope of this Appeal to apply the European Convention of Human Rights as might arise from any delay on the part of Revenue Commissioners.

(vi) Was I correct in holding that the law relating to estoppel arising from conduct on the part of the Revenue Commissioner could be applied within a Revenue Appeal from the decision of an Appeal Commissioner to the Circuit Court.

(vii) Was my finding that no estoppels arose on the facts of this case in accord with the law relating to estoppel.

(vii) Was I correct in holding that an error in a statement of an amount assessed, in a statement of the total or any amounts assessed, or in a statement of an amount due, on

the face of any document giving notice of an assessment or assessments does not preclude the establishment at hearing before the Appeal Commissioner or the Revenue Commissioners of a different amount.

(ix) Was I correct in law, holding that it was not necessary to consider the detail of the Appellant's dispute with a third party, save and to the extent that I deemed it to be of potential relevance to the operation of any estoppel."

29. It will be noted that while s. 955 of the TCA 1997 features prominently in the Case Stated there is no mention of s. 956.

The High Court

30. In her judgment delivered on 4 June 2020, Pilkington J. accepted the position advanced by the respondent and answered all questions raised in the Case Stated in the affirmative save that she determined, in line with a submission made by the respondent, that the Circuit Court had no jurisdiction to deal with the issue of estoppel, and as a result she answered Question (VI) in the negative.

31. At the hearing before Pilkington J. the appellant sought to raise for the first time in oral submissions an issue concerning s. 956 TCA. This issue had not been raised before the Appeal Commissioners and did not appear to have been raised before Judge Comerford. The respondent agreed to deal with any issue concerning s. 956 without prejudice to its contention that the same did not form part of the Case Stated before the Court.

Having set out the relevant parts of s. 956, Pilkington J. stated –

"24. Upon my interpretation of that section there is nothing that precludes, as a matter of law, the resumption of the audit. The amendment of any assessment that is specifically

referable to s. 955(2) at 1(b)(ii), and (c) above, is also subject to the criteria within s. 955(2) which is dealt with below."

Pilkington J. then addressed questions 1 and 2, and agreed with the learned Circuit Court judge that the notification from the respondent in May 2013 that the audit was continuing brought with it the implication that the Revenue enquiry had come to an end (para.31). She also addressed the appellant's contention that the appellant's letter of 20 January 2014, which was sent more than 4 years after the end of the chargeable year in which the 2009 returns and later disclosures were made, was the 'effective notice' that the enquiry had come to an end, thus allowing the appellant to rely on s. 955. She rejected this contention, finding -

"33. In question 2 and the applicability of s. 955(2) above, in my view, there is no rule of law within s. 955 or 955(2) or otherwise that the revenue audit was not deemed to take effect prior to effective notice being given that the enquiry was not proceeding. The answer to question 2 is "Yes"."

32. The trial judge went on to find that the three prompted disclosures were made after the returns were submitted, prompted by the audit (para. 34). She found –

"36. In my view this is largely a question of fact and the facts are clear. It was a prompted disclosure by this appellant. The returns had already been filed when the prompted disclosures were made. By definition if they had formed part of the return they would not be prompted disclosures. Therefore, the factual chronology "triggers" s. 955(2) and accordingly this taxpayer or chargeable person is not permitted or entitled to avail of the four-year time limit set out within that section.

37. I consider that this also disentitles this Appellant to rely upon the time limit within s. 956 at 1(b)(ii) and (c) above, for the same reasons."

33. Notwithstanding that Pilkington J. had addressed the issue of s. 956 in her judgment, solicitors for the appellant wrote to the Courts Service following delivery of same and seeking clarification with regard to whether and in what circumstances the appellant could rely on s. 956. Following that request Pilkington J. on 18 July 2020 issued the "Note" in which she refers to having delivered judgment on 4 June 2020 and a Practice Direction made during the Covid-19 pandemic allowing parties to make submissions on the form of orders and on costs after electronic delivery of judgment within 14 days. Pilkington J. then refers to the letter of request from the appellant's solicitors :-

> "4. As I understand it, it was in conjunction with the submissions advanced in respect of the questions raised by way of case stated in respect of questions 1 and 2. The letter is in the following terms:-
>
> > "At the commencement of the opening of the case, counsel for the appellant/taxpayer identified to the court an issue (not included in the appellant's written submissions) for which the appellant (having received legal advice) considered relevant and oral submissions on this issue was made as part of the appellant's case with respect to questions 1 and 2 of the Case Stated.
> >
> > In summary, counsel made the submission that the Inspector of Taxes was prohibited by s. 956(2)(b) of TCA, 1997 from issuing in September and October, 2013 the assessments (for Income Tax, CGT and VAT) as the appellant/taxpayer had already appealed under s. 956(2)(a) against the Inspector's action in resuming the audit/enquiry of 2009 and that appeal had not been heard or determined before the issue of these assessments. In accordance with s. 956(2)(a), the appellant had given notice of appeal in writing to the Inspector, namely his letter of 19th May, 2013." (my emphasis added).
>
> 3. The relevant provisions of s. 956(2)(a) relied upon are set out below:

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

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

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

(i) determine that the inspector was precluded from making the enquiry or taking the action by reason of *subsection (1)(c)*, the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or

(ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action."

Pilkington J. then stated: -

"6. I am mindful that the directions of the President as set out above do not appear to countenance additional matters to be argued with regard to the action itself but rather as to any consequential or other matters that are then required to be dealt with (primarily in respect of costs).

Given that there appears to be no objection and for the avoidance of doubt, I confirm that the contents of the letter of the 19 May 2013 relied upon are insufficient for the purposes of s. 956(2)(a). The requirement of the section is clear that there must be an appeal to the Appeal Commissioners within 30 days – the letter clearly relied upon is 19 May, 2013; the appeal was not taken within 30 days from the date of that letter as required by the section. The correspondence discloses that an appeal was only notified by letter dated 23 October 2013 and I can see nothing opened to this court to the contrary. The point advanced is, for the avoidance of doubt, dismissed and my judgment and orders in respect of questions 1 and 2 of the case stated remains."

34. While there may be some doubt as to whether this "Note" – described as a "follow up note" in the email from the High Court Registrar sending it to the parties – properly forms part of the judgment of the High Court, I do, for the purposes of this judgment, treat it as part of that judgment.

Notice of Appeal

35. In his Notice of Appeal the appellant seeks to raise front and centre s. 956 of the TCA 1997, and whether the respondents were precluded by that section from issuing the assessments in question, and whether the appellant's letter of 19 May 2013 properly constituted an appeal to the Appeal Commissioners, and whether the trial judge was wrong in her determination in para. 24 of her judgment and in the Note. These issues are raised in grounds 1 – 11, and the only other ground, ground 12, merely raises "such whole or other grounds of appeal as may be advanced at the hearing before this Honourable Court." The Appellant's written submissions, prepared by counsel, are primarily related to s. 956 TCA 1997 and its correct interpretation and effect.

Respondent's preliminary objection to raising of s. 956 issue

36. In their written submissions counsel for the respondent submit that no specific question of law concerning s. 956 TCA 1997 was included in the Case Stated. It is accepted, from *O'Sullivan v Revenue Commissioners* [2021] IEHC 118 (relying on *Untoy v GE Capital Winchester Finance Limited* [2015] IEHC 557) that a court can amend the Case Stated of its own motion, but no application was made before the High Court to formally amend the Case Stated to include any s. 956 question. It is noted that the Case Stated as transmitted from the Circuit Court remained unchanged, and that if there had been an application to amend it the respondent would have been on notice and would have opposed the inclusion of any additional question of law on the basis that s. 956 was not the subject of legal argument either before the Appeal Commissioner or the Circuit Court, and it is not referred to in the Case Stated.

37. In reliance on *Yesreb v Revenue Commissioners* [2021] IEHC 317 it was submitted that on a case stated the High Court is not exercising its original jurisdiction and has a limited jurisdiction provided by statute, and additional facts cannot be introduced at the hearing of an appeal. Counsel also relied on the judgment of MacMenamin J. in *Westlink Toll Bridge Limited v Commissioner of Valuation and Fingal County Council* [2013] IESC 42, albeit given in the context of the Rates Tribunal. In that case the point raised was not one that came within the terms of the case stated, and therefore, as a matter of jurisdiction, could not be considered by the High Court.

38. Counsel also relied on the recent unanimous decision of this Court in *Lee v The Revenue Commissioners* [2021] IECA 18 (Murray J.) where it was held that the jurisdiction of the Appeal Commissioners, and of the Circuit Court, under the TCA 1997 was limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA 1997, and does not extend to adjudicating upon whether a liability the

subject of an assessment has been compromised, or whether the Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment.

Discussion

39. It is appropriate first to consider certain provisions of the TCA 1997 relevant to the stating of cases to the High Court. S. 941(1) applies to determinations of an appeal by Appeal Commissioners, and provides that an appellant or inspector "if dissatisfied with the determination as being erroneous in point of law" may declare such dissatisfaction, and under ss. (2) may within 21 days "… require the Appeal Commissioners to state and sign a case for the opinion of the High Court on the determination". In relation to such a Case Stated, s. 941(6) provides –

> "(6) The High Court shall hear and determine any question or questions of law arising in the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as the Court may seem fit."

Subsection (7) provides that the High Court may cause the case to be sent back for amendment.

40. S. 952(1), as it applied at the time, then provided for "any person aggrieved by the determination of the Appeal Commissioners in any appeal against an assessment on that person" to appeal within 10 days to the judge of the relevant Circuit Court. Under s. 942(3) –

> "(3) The judge shall with all convenience read rehear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all consequent matters, as the Appeal Commissioners might

have and exercise, and the judge's determination shall, subject to *Section 943*, be final and conclusive."

41. S. 943(1) provided –

"(1) *Section 941* shall, subject to this section, apply to a determination given by a judge pursuant to *section 942* in the like manner as it applies to a determination by the Appeal Commissioners, and any case stated by a judge pursuant to *section 941* shall set out the facts, the determination of the Appeal Commissioners and the determination of the judge."

42. Accordingly, s. 943 gave to the Circuit Court, on an appeal from the Appeal Commissioners, the like power to state a case for the opinion of the High Court, as the Appeal Commissioners have under s. 941. This applied in the present case where the appellant appealed the three assessments (Notices of Appeal of 23 October 2013) to the Appeal Commissioners, and then further appealed the Appeal Commissioner's decision to Judge Comerford in the Circuit Court. Having determined that appeal against the appellant, Judge Comerford then stated a case for the opinion of the High Court.

43. The starting point is therefore that the Circuit Court could only state a case for the opinion of the High Court on a point of law. The jurisdiction of the High Court is limited to answering the questions of law raised in the case stated. Under s. 941(7) the High Court can send the case back for amendment, but in the present case no application was made in the High Court for the case to be sent back to the Circuit Court for amendment, and the High Court was therefore constrained by the terms of the Case Stated as they stood.

44. O'Connor J. in *Yesreb Holding Limited v Revenue Commissioners* was considering the jurisdiction of the High Court under the TCA as amended by the Finance Tax Appeal Act, 2015. As amended s. 949 AR is in substantially the same terms as s. 941(6), and s.949 AR(2) is in

substantially the same terms as s. 941(7). Commenting on the subsections, as amended, O'Connor J. states, at para. 16: -

"In summary the Court is not exercising its original jurisdiction and has a limited jurisdiction provided by statute. Therefore, whether the court may entertain a question which was not addressed before or by the Commissioner is an issue with requires deft handling if new submissions are made which were not made before the Commissioner. In simple terms, additional facts cannot be introduced at the hearing of an appeal. The spectrum of appeals in which a new issue is sought to be argued was described by O'Donnell J in *Lough Swilly Shellfish Growers Co-Operative Society Ltd and Anor v Bradley and Anor* [2013] IESC 16 at para. 27 as follows:

'… At one extreme lie cases such as those where argument of the point would necessarily involve new evidence, and with a consequent effect on the evidence already given (as in K.D.) [*K.D. (otherwise C.) v M.C.* [1985] IR 697] for example; or where a party seeks to make an argument which was actually abandoned in the High Court (as in Movie News) [*Movie News Limited v Galway County Council* (unreported, Supreme Court 25 July 1997]; or for example where a party sought to make an argument which was diametrically opposed to that which had been advanced in the High Court and on the basis of which the High Court case had been argued, and perhaps evidence adduced. In such cases leave would not be granted to argue a new point of appeal. At the other end of the continuum lie cases where a new formulation of argument was made in relation to a point advanced in the High Court, or where new materials were submitted, or perhaps where a new legal argument was sought to be advanced which was closely related to arguments already made in the High Court, or a refinement of them, and which was not in any way dependent upon the evidence adduced. In such cases, while a court might impose terms as to costs,

the Court nevertheless retained the power in appropriate cases to permit the argument to be made'.

17. This oft-quoted passage from *Lough Swilly* was referred to by MacMenamin J in *Westlink Toll Bridge Limited v Commissioner of Valuation and Fingal County Council* [2013] IESC 42 when addressing s 39 (5) of the Valuation Act, 2001, a provision which allows an appeal by way of case stated to the High Court from the Valuation Tribunal and uses similar wording to that adopted in s.941(6) of the TCA 1997. The question arose as to whether the Commissioner could raise a new issue by way of amendment to the cross appeal. At para 52 of his judgment, MacMenamin J stated:

'The jurisdiction of this Court is in turn delimited by s. 39(7) which provides that an appeal shall lie to the Supreme Court from the decision of the High Court. In my view, the Tribunal was not asked to make a decision on the argument sought to be raised by the Commissioner. The case stated did not address the issue. The new matter did not arise 'on the case'. Thus, neither the High Court, nor this Court could embark upon a consideration of that point, whether to reverse, affirm or amend the determination. The point is a simple one of jurisdiction. Neither this Court, nor the High Court would have had jurisdiction to entertain the point as, quite simply, it did not come within the terms of s 39 (5) of the Act of 2001. There had been no 'determination' on the issue in the case stated. This court had no jurisdiction to entertain the point on appeal."

45. In my view similar considerations apply in the instant appeal. No issue in relation to s. 956 was properly raised or canvassed, either in evidence or in argument, before the Circuit Court. Had any such an issue been raised (and assuming for the present purposes that the Circuit Court could have had jurisdiction to address it) it would have required evidence from the appellant. It would then have been open to the respondent to call relevant evidence and argue, for instance,

that the 4 year time limit in s. 956 was disapplied by virtue of ss. (1)(c) on the basis that the returns made in 2009 were "insufficient" having been completed in a fraudulent or negligent manner. This would have involved new facts and would necessarily have required that evidence be adduced by the respondent. That opportunity was not afforded to the respondents. It is not surprising that as a consequence, no s. 956 issue was raised in the Case Stated. In the words of MacMenamin J. in *Westlink*, the new matter did not 'arise on the case'. It was therefore not within the jurisdiction of the High Court to embark on any s. 956 issue, and it follows that this Court should not allow the appellant to pursue it as part of his appeal on the Case Stated.

46. While that is sufficient to decide this appeal in relation to the primary issue of s. 956 raised by the appellant, there is a more fundamental point in relation to the limits on the jurisdiction of the Appeal Commissioners that I believe prevents this Court embarking on this appeal, both in respect of that issue and the issue that the appellant raises in respect of an alleged procedural unfairness insofar as the respondent's Regional Office in Cork did not send formal notice of termination of the enquiry and resumption of the audit.

47. The recent judgment of Murray J. in *Lee v The Revenue Commissioners*, concerned the jurisdiction of the Appeal Commissioners in the first instance, and following on that the jurisdiction to state a case for the opinion of the High Court. There the appellant availed of his right conferred by s. 933(1) of the TCA 1997 to appeal the assessment to income tax and corporation tax to the Appeal Commissioners, and, as in the present case, after a negative decision he appealed further to the Circuit Court pursuant to s. 942. He claimed before the Appeal Commissioner that his tax liabilities had been satisfied pursuant to a prior settlement agreement made with the Revenue Commissioners. The Revenue Commissioners argued that the Appeal Commissioner did not have jurisdiction to determine whether there had been a settlement or not. That argument had been rejected by the Appeal Commissioner, but, on the

facts, the Appeal Commissioner determined that there was no settlement. In the Circuit Court, where the appellant again contended that he had agreed a valid settlement with the respondent, Judge O'Riordan determined that neither the Appeal Commissioners nor the Circuit Court on appeal had jurisdiction to determine the issue of whether the liability was settled. A case was stated on this issue to the High Court. Keane J. determined that a judge of the Circuit Court hearing an appeal from the Appeal Commissioner had jurisdiction under s. 942 to determine whether there was a prior settlement. The Court of Appeal disagreed, and determined that the Appeal Commissioners did not have jurisdiction to determine if the appellant's liabilities had been satisfied by a settlement agreement.

48. In his judgment Murray J. cited with approval the decision of Charlton J. in *Menolly Homes Limited v Appeal Commissioners* [2010] IEHC, where he held, at para. 22: -

> "In exercising that power on an appeal of an assessment by a tax inspector that an amount of value added tax is due, however, unlike in an income or corporation tax appeal, the Appeal Commissioners are limited by the legislation to scrutinising the amount of value added tax due. I feel compelled to read the legislation as drawing that distinction".

Murray J. commented –

> "55. …While Charlton J. limited his conclusion that such an argument could not be advanced to the VAT appeal provisions, much of what he says applies also to the jurisdiction of the Appeal Commissioners in hearing income tax appeals. The latter are also, as Charlton J. described it in para. 12 the appeal provisions with which he was concerned, 'a precise form of jurisdiction'".

49. Murray J. also followed the decision of this Court in *Stanley v Revenue Commissioners* [2019] 2 I.R. 218. There, the applicant sought judicial review of a notice of assessment issued by the

respondent for Capital Acquisitions Tax, interest and penalties which it was claimed was invalid having been issued outside the period of four years from the date in which the applicant had delivered what he claimed was a correct Capital Acquisitions Tax Return. The Revenue Commissioners, as in the present case stated appeal, argued that they had the power to issue an assessment outside the period where they had reasonable grounds for believing that any form of fraud or neglect, as defined in s. 49 of the Capital Acquisitions Tax Consolidation Act, 2003, had been committed by or on behalf of an accountable person in connection with the relevant return, and they contended that there had been "neglect" in that case. In addition to seeking judicial review, the taxpayer lodged an appeal to the Appeal Commissioners. The trial judge determined *inter alia* that if the taxpayer considered that an assessment was issued outside the four year time limit and was thus invalid, that appeal provided the proper basis for agitating that complaint. Thus, the trial judge found that the Appeal Commissioners had jurisdiction to determine whether or not the return delivered by the taxpayer was correct or incorrect and accordingly whether the time limit should be disapplied. Murray J. then notes: -

> "[61] In rejecting that conclusion, Peart J (with whose judgment Finlay Geoghegan and Hogan J agreed) explained, at p. 232, the jurisdiction of the Appeal Commissioners, the power of the court and the function of each in the passage relied upon by the respondents in this appeal:
>
> > '[34] The jurisdiction of the Appeal Commissioners to determine appeals against assessments of tax does not, in my view, extend to determining whether or not the notice of assessment of tax which is the subject of the appeal to them is a lawful notice or whether it is unlawful by reason of being issued *ultra vires* by Revenue Commissioner's statutory powers.

[35] A lawful assessment is a prerequisite to the exercise by the Appeal Commissioners of their powers to hear and determine an appeal against an assessment … it is only where the notice is a valid notice of assessment that the issue of quantum of tax falls to be determined by the Appeal Commissioners on appeal. Where, as in this case, the issue raised is one of law and, specifically, of statutory interpretation as to the lawfulness of an assessment as opposed to the quantum of tax so assessed, the applicant was perfectly entitled to seek to have that issue determined by way of the present judicial review proceedings.'"

50. As Murray J. observed, at para.62, the conclusion of the Court in *Stanley* was that relief by way of judicial review was available, but that was effectively the exclusive mechanism for challenging an out-of-time assessment. Ultimately Murray J. rejected the trial judge's conclusion in *Lee* that the question of whether the assessment had been compromised could be decided by the Appeal Commissioners as a matter of practicality and convenience. He stated: -

"[66] I have explained earlier why I do not believe that the provisions of the 1997 Act accommodate this construction. From the definition of the appeal, to the grounds of appeal enabled by the 1997 Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focused on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Appeal Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the 1997 Act, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment."

He did not consider that the Appeal Commissioners had jurisdiction to embark upon a determination as to the "validity" of an assessment, as that term is narrowly and technically understood, and saw no support for that submission in either *Menolly Homes Limited* or *Stanley*, stating –

> "[69] …Charleton J. in *Menolly Homes Limited* … described the function of the Appeal Commissioners in a value added tax appeal as limited to 'scrutinising the amount of value added tax due' and at para. 45 referred to the Appeal Commissioners as being 'concerned with the amount of the assessment only'. While Peart J. in *Stanley v Revenue Commissioners* … at para. 31, p. 231, said that 'The Appeal Commissioner's function is confined to determining whether the quantum of a lawful assessment is correct'. All of these decisions address themselves to the underlying legislation and neither captures the power to look beyond the charging provisions pursuant to which the assessment issued."

51. This reasoning led Murray J. to conclude that the question of whether or not a liability had been settled, or whether an inspector should be precluded from proceeding to issue an assessment by a legitimate expectation or an estoppel, were not questions that could be determined by the Appeal Commissioners. He stated –

> "[70] … The real point is that *none* of these forms of action has been entrusted to the jurisdiction of the Appeal Commissioners not because of their general legal categorisation, but because that jurisdiction is directed to the assessment and statutory charge alone. Arguments as to contract, legitimate expectation, estoppel or other theories which might, through one or more aspects of the general law operate to prevent Revenue from issuing, acting on or (as the case may be) enforcing that assessment do not come within the jurisdiction so defined."

52. Murray J. concluded: -

"[78] The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the 1997 Act in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933, 934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the 1997 Act. That means that the Appeal Commissioners are restricted to enquiring 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 enquiry. Noting the possibility that the other provisions of the 1997 Act may confer a broader jurisdiction and the requirements that may arise under EU 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 the Revenue have acted in connection with the issuing of 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."

53. Applying these principles to the preliminary issue in this appeal, it is of note that the three appeals dated 23 October 2019 from the notices of assessment in respect of Income Tax, CGT and VAT respectively lodged by the appellant did not raise any issues under s. 956. They fell to be decided by the Appeal Commissioners as appeals in relation to the amounts assessed in respect of Income Tax, CGT and VAT respectively. Those appeals were confined to determining whether the quantum in respect of each assessment was correct. The Appeal Commissioners had no greater function. No issue as to whether the resumption of the audit and

the making of the assessments in September/October 2013 was statute barred by virtue of s. 956(1)(c) or otherwise was raised by the appellant or fell to be determined by the Appeal Commissioners. The jurisdiction of the Circuit Court on appeal was similarly circumscribed, and it follows that that Court could not raise s. 956 issues by way of case stated for the opinion of the High Court, or this Court on appeal.

54. This does not mean that a s. 956 issue can never be raised before the Appeal Commissioners. Section 956(2)(a) expressly gives the taxpayer a right to appeal, within 30 days, to the Appeal Commissioners in respect of "any enquiry made or other action taken" by an inspector, and under s. 956(2)(c) the Appeal Commissioners are expressly conferred with jurisdiction to determine whether the inspector was precluded by s. 956(1)(c) from making the enquiry or taking the action. However, the appellant did not avail of that right – his October, 2013 appeals were appeals that in effect raised only quantum.

55. Further, for the reasons elaborated by Murray J. in *Lee*, it also follows that any argument that the appellant might wish to advance in respect of "procedural unfairness" (or, as it appears to have been raised in the Circuit Court, of estoppel based on the same facts) by reason of the absence of formal confirmation for the Regional Office of the ending of the enquiry and resumption of the audit, was not one which the Appeal Commissioners had jurisdiction to determine. It should be noted that the appellant's argument in this regard was related to s. 955, because he argued that the only effective notification[2] that he received of resumption of the audit was in the respondent's Mr. Thompson's letter of 20 January 2014, more than four years after his returns and the suspension of the audit. The end point of his argument was that this rendered the 2013 amended assessments invalid and that any further assessment after 31

[2] The appellant could not point to any statutory requirement of notification in respect of the ending of an enquiry and resumption of an audit. His "procedural fairness" point also seems singularly lacking in merit because he did not deny receiving the verbal notifications from inspectors in May and October 2013 of resumption of the audit.

December 2013 would be statute barred. In my view that argument was not one which the Appeal Commissioners would have had jurisdiction to determine, and should, if it were to be pursued, have been raised by way of judicial review.

56. It follows that, as the Circuit Court had no greater statutory jurisdiction than the Appeal Commissioners, it also did not have jurisdiction to consider or decide these issues, or raise any Case Stated in relation to them. *A fortiori* the High Court did not have jurisdiction to entertain such issues. The fact that Pilkington J. did consider s. 955, and also s. 956, and having done so found against the appellant under questions 1 and 2 in her judgment and the follow-on Note, does not alter this; a court cannot assume to itself or exercise an appellate jurisdiction that is not conferred by the governing statute. A

57. The foregoing is determinative of the preliminary issue but for the sake of completeness I will address some further arguments raised by the appellant.

58. There is nothing to suggest that s. 956 was raised, or the subject of any argument before, the Appeal Commissioners. However, it was suggested that it featured in the Circuit Court. Counsel for the appellant drew to our attention the very thorough judgment of Comerford J., and there is one mention of s. 956 in para. 29 where he states: -

> "29. The final preliminary determination of law I am going to make is that there is no rule of law prohibiting the raising of an assessment on foot of information obtained during an audit by reason of the fact that a Revenue Enquiry is in being. This is distinct from there being an estoppel in respect of this. If such a rule does exist, it has not, in the accepted formula, brought itself to my attention. I am not sure to what extent Revenue Audit and Revenue Enquiry are statutorily as opposed to administratively different, being of the present view that might both [*sic*] fall within the ambit of s. 956. Regardless of that I am making this ruling."

This cannot be said to be a full consideration of s. 956. It does not appear that any evidence relevant to s.956, and more particularly to whether the four year time limit in ss.(1)(c) should not apply due to insufficiency of returns due to fraud or neglect, was adduced, and accordingly the respondent had no opportunity to cross-examine and mount the case for disapplication of the time limit. Further there does not appear to have been full argument on the impact (if any) of that subsection. Accordingly, it cannot be said that there was any real consideration in the Circuit Court of the s. 956 issues now sought to be raised by the appellant in his Notice of Appeal at Grounds 1 – 11, or in his written Submission to this Court.

59. Moreover, as the respondents point out, the Case Stated itself makes no reference to s. 956. In para. 3 of the Case Stated, Judge Comerford refers to the issues that arose for his determination, which included any legal issues concerning the delay between commencement of the audit in April 2009 and the issue of the assessments in September/October 2013, and whether the respondent's letter of 20 January 2014 indicating that the Revenue Commissioners' enquiry was not proceeding was of any legal significance in the context of the assessments that had issued. In para. 8 the Case Stated sets out the legal authorities referred to by the parties, and no reference is made to s. 956 or *Menolly* (noting of course that the decisions of this court in *Stanley* and *Lee* postdate the judgment of Judge Comerford). In para. 9 the Case Stated sets out facts that were not in dispute between the parties, and includes reference to the appellant's letter of 19 May 2013, where he took issue with the delay by Revenue in finalising the matter, and asserted that the respondent was not entitled to recommence the audit, and that assessments raised on foot of the partly completed audit would be null and void. However, no mention is made there of s. 956, nor is there any reference to that letter constituting an appeal to the Appeal Commissioners in respect of the lifting of the suspension of the audit by the respondents.

60. Counsel for the appellant fell back on an argument that questions (1) and (2) of the Case Stated allowed the appellant to make submissions in respect of s. 956. It is convenient to restate these two questions: -

> "(1) Was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that precluded the taking of any steps in a Revenue Audit, while a Revenue Enquiry was in being.
>
> (2) In respect of my ruling that assessments raised in this case were not prohibited by the terms of Section 955(2) of the 1997 Act, and on the proper construction of that Section 955, was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that any steps taken in the course of Revenue Audit, as at the time when a Revenue Enquiry was in place, would only be determined to take effect when effective notice was given that the Revenue Enquiry was no longer proceeding."

61. Both of these questions, in their reference to whether or not there was any "rule of law", are general in nature and could be characterised as open-ended. Given that the permitted purpose of a Case Stated under the TCA 1997 is to seek the opinion of the High Court on a particular point of law, and that this should generally be related to the quantum or amount of the tax assessed, in my view both of these questions are impermissibly wide in their wording. Leaving aside for one moment the jurisdictional issue, it cannot be the case that the Appeal Commissioners (or the Circuit Court at the time this Case Stated was prepared) can pose questions so broadly stated as to effectively ask the High Court "what is the law?".

62. In summary –

(1) the s.956 issues now sought to be raised by the appellant were not raised or canvassed in the Circuit Court, and in particular the respondent did not have the opportunity to adduce

relevant evidence and make relevant submissions, and such issues were not the subject of the Case Stated, and therefore were not properly before the High Court or this Court;

(2) further, and alternatively, on the basis of the three appeals as made by the appellant and dated 23 October 2013, it was not within the jurisdiction of the Appeal Commissioners, or the Circuit Court on appeal, to determine the s.956 issues, and it follows that such questions could not be raised on a case stated;

(3) it follows from (1) and/or (2) that the High Court did not have jurisdiction, and this Court does not have jurisdiction on this appeal, to entertain the s. 956 issues now raised by the appellant;

(4) the fact that the learned Circuit Court judge touched on s.956 and that the trial judge addressed s. 956 issues in her judgment and follow on "Note" cannot alter this position or confer a jurisdiction on an appellate court that is not provided for in the TCA 1997;

(5) The "procedural fairness" issue was not one that the Appeal Commissioners would have had jurisdiction to hear or determine, and therefore could not properly have been the subject of a Case Stated.

63. It follows that I would accede to the preliminary application and dismiss this appeal.

64. As the respondent has been "entirely successful" in this appeal within the meaning of that term in s. 169(1) of the Legal Services Regulation Act, 2015 it is my provisional view that the respondent should be entitled to the costs of the appeal. Should the appellant wish to dispute any aspect of the proposed order as to costs he should deliver a short submission, not exceeding 1,000 words explaining why. That submission should be delivered within 10 days of the date of this judgment, whereupon the respondent shall have 10 days within which to respond to same in a submission of the same length, and the Court will convene a hearing if it considers it warranted. In the event that the appellant does not within the said period of 10 days from the

date of electronic delivery of this judgment deliver a submission disputing the proposed costs order then such an order will be made.

Donnelly and Noonan JJ. having read this judgment are in agreement with same and the orders proposed to be made.