APPROVED **[2024] IEHC 196**

THE HIGH COURT

IN THE MATTER OF A CASE STATED PURSUANT TO SECTION 949AQ OF THE TAXES CONSOLIDATION ACT 1997

Record No.: 2023/190R

BETWEEN:

THE REVENUE COMMISSIONERS

Appellant

-and-

DERMOT TOBIN

Respondent

JUDGMENT of Mr Justice Rory Mulcahy delivered on 19 April 2024

Introduction

1. What is the scope of the obligation imposed on a taxpayer by the requirement to make, in a tax return, "full and true disclosure of all material facts"? In particular, does a taxpayer satisfy the obligation by making a return which he or she believes to be true, or must the return be accurate in every material respect, irrespective of the taxpayer's subjective belief? Those are the questions posed in these proceedings.

2. The questions come before the court by way of case stated from the Tax Appeals Commission pursuant to section 949AQ of the Taxes Consolidation Act 1997, as amended ("**the TCA 1997**") at the request of the appellant, the Revenue Commissioners ("Revenue"). Section 949AP provides that a party who is dissatisfied with the determination of a Tax

Appeals Commissioner on a point of law may request the Commissioner to state and sign a case for the opinion of the High Court. In this instance, the respondent, Mr Tobin, had appealed to the Tax Appeals Commission regarding a Notice of Amended Assessment issued by Revenue on 3 April 2017. The appeal was heard before a Tax Appeals Commissioner ("the Commissioner") on 27 January 2023. The Commissioner decided that Mr Tobin was not liable for the sums assessed in a determination dated 27 February 2023. Revenue requested that the Commissioner state a case to the High Court on a point of law, and she agreed to do so, signing the Case Stated pursuant to section 949AQ on 26 June 2023. The Case Stated poses three questions, as follows:

i. Did the Commissioner err in law in the interpretation of section 955(2) TCA 1997?
ii. Was the Commissioner correct in her application of section 955(2) TCA 1997?
iii. Did the Commissioner err in law in making primary findings of fact which it was unreasonable for her to make because the evidence did not support such findings and/or the evidence pointed to the contrary position, namely that [Mr Tobin] believed the SPS payment was income in the hands of DTFL and not income in the hands of [Mr Tobin]?

Background

3. Part 41 of the TCA 1997 (sections 951 – 959, headed "Self Assessment") is the relevant part of that Act for the purpose of these proceedings. Part 41 was repealed in its entirety by section 129(2) of the Finance Act 2012 but remains operative in respect of returns delivered before the end of 2012. I note that new provisions governing self assessment were introduced by the 2012 Act which incorporate many of the elements contained in the original Part 41, including provisions similar to those contained in section 955(2).

4. Section 951 imposes an obligation on a chargeable person to file a return in respect of income tax and capital gains tax. Pursuant to section 954(2), an inspector of taxes makes an assessment of the amount for which the chargeable person is liable based on the contents of the return. The inspector then sets out in a notice of assessment the amount of tax due to be paid. Section 955(1) of the TCA 1997 provides that the inspector may amend a tax

assessment at any time, irrespective of whether tax has already been paid on foot of the original assessment. Section 955(2), which is at the heart of this case stated, imposes a time limit on that power:

> *(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period in which the return is delivered and*
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> *(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years; and*
>
> *(ii) no tax shall be repaid to the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period for which the return is delivered,*
>
> *by reason of any matter contained in the return.*
>
> *(b) Nothing in this section shall prevent the amendment of an assessment –*
>
> *(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),*
>
> *(ii) to give to a determination on any appeal against an assessment,*
>
> *(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,*
>
> *(iv) to correct an error in calculation, or*
>
> *(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person…*

5. Accordingly, save for the situations provided for in section 955(2)(b), Revenue is not permitted to make an amended assessment after four years unless the taxpayer's return fails to make true and full disclosure of all relevant facts.

6. Subsection (4) provides:

(a) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for x purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(b) *This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question.*

7. Section 956(1)(b) and (c) of the TCA 1997 are also of some relevance:

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

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

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

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

8. On 3 April 2017, Revenue issued a Notice of Amended Assessment ("**the Amended Assessment**") to Mr Tobin for the year ending 31 December 2011. The liabilities in respect of which the Amended Assessment was delivered related to an entitlement received by Mr Tobin from the Department of Agriculture, Food and the Marine ("DAFM") in 2011, known as the Single Payment Scheme (SPS), in the amount of €140,656, which had not been included in Mr Tobin's return for that year. The genesis of the dispute between the parties was Mr Tobin's decision to transfer his farm business to a company incorporated by him, Dermot Tobin Farm Limited (DTFL). This transfer took place during the course of 2011. An SPS payment was made to Mr Tobin for that year, which he immediately transferred to DTFL. This income was returned as income of the company for 2011 and not as income of Mr Tobin. The Amended Assessment treated the entirety of that payment as income in the hands of Mr Tobin and assessed his additional liability for income tax as €72,728.35. It was acknowledged by counsel for Revenue, that its contention that Mr Tobin was liable for income tax on the SPS payment necessarily involved an acceptance that DTFL had overpaid in respect of its income tax for the year 2011.

9. Mr Tobin appealed the Amended Assessment to the Tax Appeals Commission, arguing that the assessment was out of time having regard to the provisions of section 955(2) and 956 of the TCA 1997.

The Determination

10. In order for Mr Tobin to be entitled to rely on the four-year time limit in section 955(2), he had to satisfy the Tax Appeals Commissioner that he had made full and true disclosure of all material facts in his 2011 return. The Commissioner made a number of findings of fact which are summarised in the Case Stated. It is helpful to set out those findings in full. Mr Tobin is the "appellant" referred to in this summary:

(i) Prior to 1 June 2011, the appellant personally farmed his lands.

(ii) On 31 May 2011, the appellant incorporated his farming business under the company name DTFL and DTFL held its first meeting.

(iii) From 1 June 2011 onwards, DTFL commenced trading it carried out all farming activities and the appellant transferred all stock and machinery of the farming trade to DTFL.

(iv) *On 8 June 2011, the appellant and his wife entered into a lease agreement with DTFL for a period of four years and seven months for 35 acres that they owned jointly. In addition, the appellant entered into a lease agreement with DTFL for four years and seven months for 20 acres of which he had a life interest. On 1 October 2012, Castletown Farms Limited entered into a lease agreement with DTFL for 303 acres at Castletown for a period of three years.*

(v) *On 29 June 2011, the herd number was transferred to DTFL.*

(vi) *In May 2012, the appellant applied to the DAFM to transfer the SPS entitlements to DTFL.*

(vii) *SPS payment applications must be made to the DAFM prior to 15 May and transfer or amendments made up to 31 May in any given year.*

(viii) *The SPS payment from the DAFM was paid directly into the bank account of the appellant and immediately transferred to the bank account of DTFL.*

(ix) *The SPS payment from the DFM for 2011 was returned by DTFL in its Corporation tax return.*

(x) *The relevant date for the purposes of section 955 TCA 1997 and the four year time limit for raising an assessment is 31 December 2016.*

(xi) *The appellant has made what he believed to be a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period 2011.*

11. It was clear that the Amendment Assessment had been made more than four years after the expiry of the chargeable period in respect of which the original return had been made and was, therefore, out of time unless the provisions of section 955(2) or 956(1) were engaged. The Commissioner concluded that the Amendment Assessment had been issued by Revenue on the basis that Mr Tobin had not made a full and true disclosure of all material facts, *i.e.*, in reliance on the exception in section 955(2)(a), rather than on the basis of section 956. This is not disputed by Revenue. She stated that, therefore, Revenue did not have to establish fraud or negligence on the part of Mr Tobin. As summarised in her Case Stated, the Commissioner concluded that what was at issue was whether Revenue was entitled to issue an amended assessment on the grounds that Mr Tobin had not made a full and true disclosure of all material facts.

12. The Commissioner concluded that Mr Tobin *had* made a full and true disclosure, and that the omission of the SPS entitlement from his tax return did not amount to a default in the disclosure of material facts. In so doing, the Commissioner said that she had had regard to the dictionary definitions of "full" and "true" and the decision of the Supreme Court (Clarke J) in *Revenue Commissioners v Droog* [2016] IESC 55.

13. Having concluded that Mr Tobin had made a full and true disclosure of all material facts, the Commissioner concluded that Revenue was not entitled to issue the Amended Assessment at all and, therefore, the question of whether the SPS payment from the DAFM was taxable as income in the hands of Mr Tobin did not arise for consideration.

The Case Stated

14. Revenue's argument in this Case Stated is confined to two issues. First, it argues that the Commissioner misinterpreted section 955(2) and, accordingly, misapplied that section when determining the appeal to her. In effect, Revenue argues that section 955(2) disapplies the four-year time limit where a chargeable person makes a return which is not *accurate*. It argues that Mr Tobin has never contended that his return for the year 2011 is accurate, or disclosed all relevant facts, only that he believed it to be a full and true return when he made it. Revenue argues that the Commissioner erred in law in importing a subjective element to the question of whether a return was full and true, conflating the tests in section 955(2) and 956, notwithstanding her express conclusion that section 956 did not apply and that it was not necessary to establish negligence or fraud. Revenue argues that, accordingly, the response to the first two questions posed in the Case Stated are "yes" and "no" respectively.

15. In the alternative, Revenue argues that even if the application of section 955(2) and the assessment of whether full and true disclosure had been made involves some element of subjective belief, there was no basis upon which the Commissioner could have concluded that the respondent did, in fact, believe that he had made a full and true disclosure of all material facts. In this regard, Revenue places some reliance on the arguments advanced in Mr Tobin's notice of appeal to the Tax Appeals Commission in which he appeared to concede that at least a portion of the SPS payment should have been returned as income in his hands rather than of DTFL. The answer to the third question in the Case Stated should, according to Revenue, be "yes".

16. Mr Tobin argues that sections 955 and 956 must be read together as comprising the entire statutory scheme pursuant to which amended assessments can be issued by Revenue. He argues that just as section 956 *expressly* requires some element of fault – fraud or negligence – on the part of the chargeable person in order for the four-year time limit in that section to be disapplied, section 955 must incorporate an element of subjectivity in the determination of whether full and true disclosure has been made, and that a taxpayer's subjective belief is relevant to that assessment. He contends that the first two questions in the Case Stated should be answered "no" and "yes" respectively.

17. As regards the alternative argument, Mr Tobin argues that there was ample material before the Commissioner which was capable of grounding her conclusion that it was his belief that he had made a full and true disclosure of all material facts in his 2011 return, and therefore the third question posed in the Case Stated should be answered "no".

Applicable Principles

i. Appeal by way of case stated

18. The parties are agreed that the proper approach for a court to take in considering a case stated is that set out by Kenny J in *Mara (Inspector of Taxes) v Hummingbird* [1982] ILRM 421 as approved by the Supreme Court in *O'Culachain v McMullan Brothers Ltd* [1995] 2 IR 217 (at pp. 222 -223):

> *"(1) Findings of primary fact by the judge should not be disturbed unless there is no evidence to support them.*
> *(2) Inferences from primary facts are mixed questions of fact and law.*
> *(3) If the judge's conclusions show that he has adopted a wrong view of the law, they should be set aside.*
> *(4) If his conclusions are not based on a mistaken view of the law, they should not be set aside unless the inferences which he drew were ones which no reasonable judge could draw.*

(5) Some evidence will point to one conclusion, other evidence to the opposite: these are essentially matters of degree and the judge's conclusions should not be disturbed (even if the Court does not agree with them, for we are not retrying the case) unless they are such that a reasonable judge could not have arrived at them or they are based on a mistaken view of the law."

19. Those principles have been approved more recently in *Byrne v Revenue Commissioners* [2021] IEHC 262, in which Twomey J noted the "high threshold" facing an appellant in a case stated, having regard to the curial deference due to the Tax Appeals Commission. Twomey J's observations were, in turn, endorsed in *McNamara v Revenue Commissioners* [2023] IEHC 15 by Barr J, though Barr J did sound a note of caution, referencing the observations of Murray J in *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 that curial deference depends on a tribunal having provided a properly reasoned decision, and was not a mechanism for compensating where the decision was not so reasoned.

ii. Statutory Interpretation

20. The main dispute between the parties concerns the interpretation of section 955(2). The principles applicable to statutory interpretation have been the subject of a number of recent decisions of the Superior Courts and, accordingly, there was little dispute between the parties regarding the proper approach to take.

21. Both sides quote *Perrigo Pharma International DAC v McNamara and Ors* [2020] IEHC 552 in their submissions, a case concerning the interpretation of different provisions of the TCA 1997 than those at issue here:

*"**74.** Before addressing the competing arguments of the parties on the interpretation of s. 445, it is necessary to identify the approach which a court is required to take in relation to the interpretation of statutes. The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue*

Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

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

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

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

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

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

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

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

> "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is

complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts 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"."

22. Reference was also made to the more recent Supreme Court decision in *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43; [2022] ILRM 313. In that case, the Supreme Court (Murray J) again reviewed the relevant authorities. The court emphasised the primacy of the words used in a statute but explained that even plain words should not be interpreted divorced from the context in which they are used:

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

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

iii. Section 955 of the TCA 1997

23. As it happens, the provisions of sections 955 and 956 have been the subject of a number of decisions of the Superior Courts. Of most relevance is the decision of the Supreme Court in *Revenue Commissioners v Droog* [2016] IESC 55, on which both sides place reliance and in which the court (Clarke J, as he then was) addressed these statutory provisions. It is important to note that in that case, the court's focus was whether the time limits in those provisions applied to a specific procedure under the TCA 1997 relating to tax avoidance, rather than the interpretation of the provisions themselves.

24. Clarke J considered the scheme of Part 41 of the TCA 1997, which provided for self assessment by taxpayers of certain taxes:

> *"4.3 It is next necessary to note the basic scheme of Part 41. Section 951 TCA creates an obligation on all relevant persons to make a return. Section 954(2) then provides that, subject to subs.(3), an assessment is to be made by reference to the particulars contained in that return. There is, however, a saver which allows the inspector to make a separate assessment where the inspector is not satisfied with the return or has information suggesting an insufficiency in the return. In other words, the default position is that the inspector makes an assessment in accordance with the details set out in the return but the inspector does have the option of departing from those details for good reason."*

25. He then referred to section 955(1), the purpose of which, he wrote, *"would appear to be to ensure that a tax payer could not argue that the fact that they had made a return and had paid tax in accordance with an assessment raised on foot of that return might mean that their tax affairs for the fiscal period concerned were irrevocably finalised*." He then noted that section 955(1) was subject to the exception in subsection (2).

26. He described these provisions as follows (at para. 4.4 et seq.):

> *"The substance of that provision is to protect a tax payer who makes a "full and true disclosure" of all relevant "facts". In such a case no further assessment can be made*

after the relevant four year period and, importantly, no additional tax is to be paid and no tax is to be repaid by reason of any matter contained in the return. There are, of course, the exceptions contained in subs(b) but none of these apply in the circumstances of this case.

4.5 It is easy to understand the reasoning behind that provision. Where a tax payer has made a "full and true" disclosure of all relevant facts, the Oireachtas must have considered that it would have been significantly unfair to allow Revenue to reopen the amount of tax due after the relevant four year period. It is also of some relevance to note the provisions of subs.(4) which allows for the expression of doubt where a tax payer is unsure as to the law in any particular relevant regard but makes a return to the best of their ability while expressing doubt. Unless that expression of doubt is found to be ungenuine then the person will be regarded as having made a "full and true disclosure" even though it may turn out that their view of the law was wrong. Thus a person who makes an incorrect return, but expresses what is found to be a genuine doubt, will be held to have made an appropriate return thus triggering the time limit but, equally importantly, that facility cannot be abused by ungenuine expressions of doubt."

27. He then referred to section 956 and the four-year rule applicable in that section. He concluded on that section (at para 4.7 et seq.):

"*An inspector is not, therefore, entitled to engage in a purely "fishing" exploration of whether old returns (i.e. returns more than four years previous) were inaccurate but rather is required to have some reasonable basis for considering that the return was fraudulent or negligent before embarking on inquiries. Section 956(2)(a) allows a tax payer who feels that an inspector is making inquiries outside the time limit in circumstances not permitted to appeal to the Appeal Commissioners.*

4.8 It follows that, at least in general terms, ss.955 and 956 are designed to prevent the reopening of the tax affairs of a tax payer in respect of the types of tax covered by Part 41 outside of a four year period except in circumstances where the original return was, or was reasonably suspected to be, fraudulent or negligent. Even if such a reasonable suspicion exists no ultimate exposure to adverse tax consequences can be placed on the

tax payer concerned unless it is ultimately established that the relevant return was in fact not full and true in its disclosure."

28. The court addressed an argument by Revenue that an interpretation which found that the four-year time limits in Part 41 applied to the tax avoidance procedures would be anomalous, as it would result in a four-year time limit applying to those procedures for self-assessed persons but not persons in employment whose tax was deducted under the PAYE system. The court noted that this was a distinction which applied "across the board" and therefore no great weight should be attached to it. It also noted the limited circumstances in which the time limit applied:

"6.5 Furthermore, it seems to me that, if it is necessary to look at the broad purpose of the legislation as a whole, it is also necessary to take into account the consequences of Revenue being correct in their interpretation. It must be recalled that the time limit only applies in the case of a tax payer who has made full and true disclosure without fraud or negligence. For shorthand I will refer to a return which meets those requirements as being a fully compliant tax return. If the construction which Revenue seeks to place on the Taxes Acts as a whole is correct then it follows that a tax payer who has in fact made a fully compliant return and paid the tax assessed on the basis of that return can have their tax affairs revisited at any time into the future. This can be so without any assessment as to the circumstances giving rise to the lapse of time between that fully compliant return and the implementation of section 811 by means of serving a notice containing the relevant opinion. It is true, of course, that the legislation (s.811(b)(a)) does require Revenue to immediately notify a tax payer as soon as the relevant opinion has been formed. But the legislation does not say anything about the time which may elapse in the formation of such an opinion. Conferring an entirely open ended entitlement on Revenue to revisit the tax affairs of persons who have made fully compliant tax returns, at potentially a very great remove from the time when such returns were made, would itself give rise to potential unfairness.

6.6 In saying that I would wish to strongly emphasise that those comments are made solely in the context of a case where a tax payer has made a fully compliant return. They could have no application where the tax payer has given incomplete or incorrect information to Revenue."

29. Two recent decisions of the High Court have considered the application of the time limit in section 955(2), both cases stated pursuant to section 949AQ. In *Hanrahan v Revenue Commissioners* [2022] IEHC 43, the High Court (Stack J) had to consider whether a return which failed to disclose that a relevant transaction was a transaction between connected persons was a "full and true disclosure" for the purpose of section 955(2). In circumstances where that fact was, in her view, "critical information", she held that the return was not a full and true disclosure, and therefore the four-year time limit didn't apply. In rejecting an argument by the taxpayer that, because Revenue had been able to make *some* assessment based on the return, the provisions of section 955(2) were satisfied, Stack J commented as follows:

> "*92. It is quite clear from the terms of s. 955 (2)(a) that it only has application in the case of "a fully compliant tax return", as clearly stated by the Supreme Court in* Droog. *The appellant's argument would have the effect of avoiding this pre-condition entirely: once Revenue proceeded to an assessment, a taxpayer could say that because Revenue was able to issue a notice of assessment for some amount, it would follow in all cases where a formal notice of assessment issued that the material non-disclosure could not be said to be necessary to the assessment.*
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> *93. In my view, the appellant clearly did not make a full and true disclosure of all material facts necessary for the making of an assessment for the 2004 chargeable period. This means that the appellant is not a person who can avail of s. 955 (2) to prevent an assessment to capital gains tax for 2004. This follows from the Supreme Court judgment in* Droog*."*

30. In *McNamara v Revenue Commissioners*, cited above, Barr J concluded that the Tax Appeal Commissioner was entitled to conclude that there hadn't been full and true disclosure in the relevant return. In that case, it was admitted that there were a number of errors in the return, but the taxpayer argued that he was relieved of responsibility for those errors because the return had been made by his tax adviser.

31. The court made clear that there was a distinction between the question of whether a return had been made negligently and whether it was "full and true" (at para 101), a factor emphasised by Revenue in these proceedings:

> *"The case law referred to by the appellant dealt with a separate question altogether. They primarily dealt with the issue of whether the taxpayer had been negligent in making his return, when he did so based on advice as given by his tax advisers. These cases did not deal with the issue of whether the taxpayer could be held not to have made "full and true disclosure", when making an erroneous return."*

32. Mr Tobin, by contrast, emphasises the court's further analysis of the circumstances in which the return was made:

> "***102.*** *In the present case, the taxpayer remains liable for the accuracy of his tax return, even though it was submitted by his accountant on his behalf. In this case one is dealing with a tax return that was made by the appellant. There were a number of errors, which did not involve complex issues of interpretation of tax statutes, or complex issues of law. In these circumstances, the appellant cannot avoid the consequences of his erroneous return, by pointing to the fact that the return was submitted on his behalf by Mr. Casey.*
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> ***103.*** *It is noteworthy that neither the appellant, nor Mr. Casey, contended that the content of the return had been made as a result of detailed advice given by Mr. Casey to the appellant. On the crucial question as to whether the sale of the land had been identified in the return, as being a sale of development land; in cross-examination, Mr. Casey accepted that he had not discussed with the appellant whether it was the sale of development land. He could not say whether his colleague in the office had discussed the matter with the appellant. He stated that the return was completed on the basis that it was not a sale of development land. The court is satisfied that in these circumstances, the Commissioner had been entitled to hold that full and true disclosure had not been made by the appellant in his tax return."*

33. Also of potential relevance are two decisions dealing with different provisions of the TCA 1997, but which address similar concepts. In *Stanley v Revenue Commissioners* [2017] IECA 279, the Court of Appeal (Peart J) considered sections of the TCA 1997 relating to Capital Gains Tax and Capital Acquisitions Tax. The relevant provisions, section 46(2)(a)

of the TCA 1997, require chargeable persons to deliver a "full and true return" of matters relevant to the assessment of, *inter alia*, CGT. The chargeable person is also required to make an assessment of the amount of tax which "to the best of that person's knowledge, information and belief" ought to be due. The provisions include a four-year time limit within which Revenue may raise an additional assessment, but that time limit is disapplied if Revenue has reasonable grounds for believing that any form of fraud or neglect has been committed by a chargeable person in connection with the return. Neglect is defined to include negligence *"or a failure to deliver a correct return"*. Revenue claimed an entitlement to raise an additional assessment because the taxpayer had incorrectly assessed the amount of tax due. The Court distinguished between the return and the assessment and concluded that because there was no error in the *return*, the four-year time limit applied. The court concluded that the obligation to file a full and true return was satisfied by providing a *correct* return (at para 44):

> "*Provided that the tax payer has fully and correctly completed those Parts, omitting no relevant detail that ought to be provided therein, he/she will have complied with the requirements of s. 46(2)(a)."*

34. In *Tobin v Foley* [2011] IEHC 432, the High Court (Peart J) considered the concept of "negligence" in making a return for the purpose of the TCA 1997 (at para 30):

> *"Negligence in the context of this legislation means that a person having a duty to make a tax return truthfully and honestly fails to make all appropriate inquiries in order to ensure that the details contained in the return were complete, accurate and truthful. A person completing such a return must be expected to make appropriate enquiries if she herself does not have the necessary facts and information in order to complete the return. If she has to rely on others for information, she is under an obligation to ensure as far as reasonably possible that the information given is correct and truthful."*

35. In addition to the Irish authorities, Revenue relied on a decision of the High Court of Australia, *Federal Commission of Taxation v Levy* [1961] HCA 92, (1961) 106 CLR 448. That case concerned, what appear to be, similar statutory provisions to those at issue here, which applied a time limit of three years to the making of an amended assessment where there has been true and full disclosure of all material facts in a return. The taxpayer in

question had made returns in the belief that they were true, but he had been defrauded by his bookkeeper, described by the court as a "rogue", who misappropriated funds from the taxpayer's partnership. When filing his personal tax returns, the taxpayer relied on the accounts prepared by the bookkeeper, which were, of course, misleading. The Australian High Court concluded that there had not been full and true disclosure on those tax returns. Owen J, in his judgment, expressed the view that once a return contains an incorrect statement of a material fact, the question of whether the taxpayer knew or ought to have known that the return contained an incorrect statement was irrelevant. As emphasised by counsel for Mr Tobin, Owen J acknowledged a number of cases which allowed for a "*more benevolent construction*", which did not impose a burden on a taxpayer to disclose something unknown to them, or of which they could not, with reasonable diligence, have discovered. In that case, Owen J was satisfied that the correct position was within the taxpayer's means of knowledge, had proper investigations been made, and therefore was not a full and true disclosure, so the time limit didn't apply. In those circumstances, he didn't need to make a final determination on whether the relevant section imposed a wider duty of disclosure.

36. Dixon CJ, who expressed his agreement with Owen J, went further and concluded that once the figures given in the return were incorrect, that "*is in itself enough to make it impossible to hold that there was a full and true disclosure of all the material facts necessary for the assessment of the taxpayer. "True" in this phrase appears to me to refer simply to the correctness of the material facts disclosed and to imply nothing as to the taxpayer's knowledge of the erroneous character of any incorrect fact he may state."* The third judge, Taylor J, expressed his agreement with both Dixon CJ and Owen J.

Discussion

i. Questions 1 and 2

37. Before considering the proper interpretation of section 955(2), I note that Revenue has argued that the Commissioner erred in not determining the question of whether Mr Tobin was liable to pay income tax on the SPS payment before addressing the application of section 955(2), since only once that issue was decided could it be determined whether the fact of that payment was a relevant matter which Mr Tobin was required to disclose.

However, it seems to me that the Commissioner addressed the question of the application of section 955 on the assumption that the SPS payment was, or at least might be, material. Having concluded that section 955(2) did not apply, *i.e.* that Mr Tobin had made a full and true disclosure, she did not consider, still less decide, whether Mr Tobin was liable to income tax in relation to some or all of the SPS payment. In the circumstances, it is appropriate to follow the approach of the Commissioner and consider the interpretation and application of section 955(2) first.

38. In light of the principles identified in the cases referred to above, the appropriate approach to take to the interpretation of section 955(2) is to give the words in that section their plain and ordinary meaning, but to have regard to the fact that the plain meaning of the words must be understood in the overall statutory context in which they are used.

39. The words "full" and "true" are familiar words which are, in the ordinary course, readily capable of being understood. However, they are both words capable of carrying a variety of meanings. Moreover, the Oireachtas has chosen to impose a requirement that a return be both full *and* true, which indicates that these are distinct but complementary concepts. Before considering what the plain and ordinary meaning of the words is here, it is, therefore, all the more necessary to understand the context in which the statutory provision arises.

40. First, the TCA 1997 is a taxation statute. As made clear in *Perrigo*, both the imposition and the exemption of liabilities must be done expressly and in clear and unambiguous terms.

41. Second, the provision is contained in the self assessment part of the TCA 1997. That part imposes an obligation on taxpayers to provide Revenue with the information necessary to enable Revenue to assess the tax for which that taxpayer is properly due. As argued by counsel for Revenue, it is the taxpayer, not Revenue, who is in possession of the relevant information to enable Revenue to make an assessment. The provisions of Part 41 should be understood, therefore, as imposing on a taxpayer an obligation to provide all the information necessary to ensure that Revenue is in a position to correctly assess that taxpayer's liability to tax.

42. As made clear in *Droog*, the existence of the four-year time limit must be regarded as being for the benefit of the *taxpayer*, as "*the Oireachtas must have considered that it would*

be significantly unfair to allow Revenue to reopen the amount of tax due after the relevant four year period". Insofar as the time limit is disapplied in certain circumstances, this must, in turn, reflect the Oireachtas' view that it would *not* be unfair to allow Revenue to reopen the amount of tax due in those specified circumstances.

43. Two other features of the immediate context to section 955(2) are of relevance. These are the provisions of section 956(1)(c), and the provisions of section 955(4). Section 956(2) applies a four-year time limit preventing Revenue making any further enquiries in relation to the accuracy of a return unless it reasonably suspects that the return is insufficient due to fraud or negligence. The disapplication of the limitation period in section 956 is thus expressed in markedly different terms than the disapplication in section 955.

44. In addition, section 955(4) makes provision for the subjective belief of the taxpayer regarding what should be included in a return. Where the taxpayer has a doubt as to the correct treatment for tax purposes of any matter, the taxpayer will be treated as having made a full and true disclosure where the return is made to the best of that person's belief as to the correct treatment, provided the taxpayer has specified in the return the matter in respect of which there is a doubt. The necessary implication of this provision is that the return will be treated as full and true *even if incorrect*, so long as a belief that it was correct was genuinely held.

45. Turning then to what the words "full and true" mean, set in that context, I note that the Commissioner says she considered the dictionary definition of those words, although she doesn't specify what dictionary or, for that matter, what definition. Revenue criticise her for doing so in any event, arguing that it is contrary to the principle of interpretation in context. In circumstances where it is not known to which dictionary definitions she was referring, it is difficult to know whether this criticism is valid. Neither party appears to have relied on dictionary definitions in their submissions on the appeal or as part of the Case Stated. For completeness, I note that the Oxford English Dictionary defines "full" in a variety of ways, the most obviously relevant being as an adjective meaning "not lacking or omitting anything, complete". Similarly, "true" has a number of meanings, including "in accordance with fact or reality", and "accurate or exact".

46. Perhaps the most straightforward approach to interpreting section 955(2), or testing the competing interpretations, is to ask whether, assuming that the SPS payment should have been treated as income in the hands of Mr Tobin, his 2011 return, which didn't reference that income, could be said to contain a full and true disclosure of all relevant facts. Divorced of context, in my view, the answer to that question is clear: it did not. On the assumption that the payment was income in the hands of the respondent, "full" disclosure would have required that income to be disclosed. "True" disclosure is a little more difficult as a concept, but not unduly so. In its plain and ordinary meaning, the requirement is that it be true that *all* relevant facts have been disclosed. *Prima facie*, if a relevant fact is not disclosed, for whatever reason, *the return* is not true.

47. Taking that as the meaning of the section when no regard is had to the wider context or purpose of the section, the question then becomes whether, when context and purpose *are* taken into account, a different interpretation of section 955(2) is necessitated, or, more specifically, whether the respondent's interpretation, that "true" means, in effect, "genuinely believed to be true" is the correct one. In asking that question, the caveat of Murray J in *Heather Hill*, cited above, bears emphasising:

> *"However - and in resolving this appeal this is the key and critical point - the* 'context' *that is deployed to that end and* 'purpose' *so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."*

48. Put otherwise, do the context and purpose of section 955(2) *compel* an interpretation which differs from the apparent meaning of that section. Though the apparent meaning of the section is not without difficulties, I am unable to conclude that the context and purpose of the section require that that interpretation be displaced.

49. The proximate statutory provisions certainly do not suggest that "true" be interpreted to import the taxpayer's subjective view as to whether the information in the return is true. Section 956(1) limits the powers of Revenue to re-open tax affairs after four years in the absence of fraud or negligence. There is no such limitation in section 955(2), and the use of

those concepts in the most proximate statutory provision strongly suggests that there was no intention to incorporate any subjective element into that section.

50. Similarly, section 955(4) expressly provides that the genuinely held belief of a taxpayer will serve to maintain the time limit once certain conditions are met, *i.e.* the taxpayer has specified a doubt in the relevant return. I accept that for section 955(4) to be engaged, the taxpayer must have a doubt as to the correct approach to the return, and that it is entirely feasible that a taxpayer may make an error in the treatment of income for the purpose of a return, but have no doubt in their genuine belief in the correctness of the return. Be that as it may, the fact that the Oireachtas carved out a specific circumstance in which a genuinely held belief *is* a sufficient basis to treat a return as full and true also strongly suggests that a genuinely held belief would not otherwise be sufficient.

51. More generally, I accept the submission by counsel for Revenue that the provisions of section 955 must be seen in the context of Part 41, dealing with self assessment, in which the taxpayer is obliged to provide Revenue with the necessary information to allow it to make an assessment. For Revenue to accurately assess the tax for which a self-assessed taxpayer is liable, Revenue must be provided with full and *accurate* information. The legislative scheme should be understood, therefore, as imposing a premium on the accuracy of the information. It is true that a provision which stipulated that Revenue could not raise an amended assessment more than four years after the end of the year to which a return relates unless there is a reasonable suspicion that the return has been made fraudulently or negligently, *i.e.* which applied the same threshold in section 955 as in section 956, could be said to meet that objective, but that is not the language of section 955.

52. All of the above considerations seem to point in one way, and an interpretation which disapplies the time limit in the event that a return is inaccurate, seems consistent, or at least not inconsistent, with the Irish authorities cited above. *Stanley*, albeit in respect of different statutory provisions, describes a taxpayer's obligation as having been met when a *correct* return is made, *Droog* and *Hanrahan* refer to "fully compliant" returns. Both *Droog* and *McNamara* emphasise that there is a distinction to be drawn between the fraud and negligence threshold in section 956(1)(c) and the threshold in section 955(2).

53. Insofar as Barr J, in *McNamara,* noted that there was no complexity about the return in that case and that the return had been made without the benefit of detailed advice, in circumstances where he had expressly contrasted the threshold in section 955 with cases dealing with whether a return had been completed negligently, I do not think those observations are sufficient to support Mr Tobin's case that the question of whether there has been full and true disclosure should be determined by reference to the subjective belief of the taxpayer. This interpretations is also consistent with the opinion of Dixon CJ and Owen J in the Australian authority relied on by Revenue, though I have some reservations about the relevance of authorities based on the interpretation of a specific provision from the tax code of a different jurisdiction.

54. An interpretation which equates "full and true" with "accurate" or "correct" no doubt poses a significant onus on the taxpayer, but that seems to me to be consistent with the existence of a system of self assessment. It also has the virtue of being more straightforward to apply, consistent with the requirement for clarity in the imposition of both liabilities and exemptions in taxation statutes.

55. There are, however, two countervailing considerations which I should identify, notwithstanding that I don't consider them to be sufficient to displace what seems to me to be the plain meaning of the sub-section.

56. The first is the question of fairness. As the Supreme Court noted in *Droog*, section 955(1) represents the Oireachtas' recognition that it would be unfair for Revenue, with their extensive powers, to be empowered to re-open a taxpayers' tax affairs, or levy further tax liabilities, many years after an initial assessment. An interpretation which enabled Revenue to do just that, even where the taxpayer has a genuine, and perhaps reasonably held, belief that they have properly accounted for their income in a return might well be considered unfair. However, any unfairness is mitigated in a number of ways. First, Revenue can only carry out further enquiries after four years where there is a reasonable basis for believing there has been fraud or negligence. Absent fraud or negligence, therefore, Revenue can only make an amended assessment on the basis of information already available to it. That must necessarily limit the circumstances in which the exercise of the power may arise. Second, where the power does arise, the taxpayer is only exposed to a liability to which Revenue contends that that taxpayer should always have been liable. And third, the possibility of an

appeal to the Tax Appeals Commission remains available to the taxpayer, in which the taxpayer can challenge an amended assessment, including Revenue's entitlement to have made that amended assessment.

57. The other factor is that an interpretation which demands accuracy in a return in order for the time limit to apply would appear to significantly limit the scope of a provision apparently intended to benefit taxpayers. If one considers that Revenue could only ever make an amended assessment which sought to impose further liability on a taxpayer if there was some error or gap in the original assessment, then an interpretation which disapplies the time limit in the event of an inaccurate *return* necessarily limits the scope of the time limit. Section 955(2)(b) disapplies the time limit in the even of an error of fact or miscalculation by revenue. It would appear, therefore, that the time limit would or could only apply to prevent Revenue simply changing its mind as to the appropriate treatment of some matter in the return, or where Revenue had made an error of *law* in assessing the tax to be paid.

58. It may well be that, so interpreted, the protection to taxpayers provided by section 955(2) is somewhat more limited than that intended by the Oireachtas. However, it is very far from being the case that the context and purpose of section 955(2) are clearly at odds with that interpretation sufficient to displace the plain meaning of the words in the subsection.

59. In the circumstances, the answer posed to the question at the opening of this judgment is that for a tax return to be regarded as a "true and full disclosure of all material facts", it must be accurate in every material respect; a taxpayer's subjective belief, however well-informed, as to the accuracy of its contents is not a relevant consideration.

60. In light of the above, I consider that the first two questions in the Case Stated should be answered "yes" and "no" respectively.

ii. Question 3

61. In light of my conclusions on questions 1 and 2, the issue identified in question 3, whether it was open to the Commissioner to conclude that Mr Tobin believed that the SPS payment was income in the hands of DTFL or income in his own hands, does not arise,

because Mr Tobin's belief is not relevant to the question of whether the four-year time limit applies. However, in light of the answers to questions 1 and 2, the matter will have to be remitted to the Commissioner and she will have to consider whether all or any of the SPS payment was income in the hands of Mr Tobin, an issue she hasn't yet determined, and what consequences which flow from her conclusion. It may be that Mr Tobin's belief could be relevant to those considerations. In any event, lest I am wrong about the answers to questions 1 and 2, and since the Commissioner has seen fit to ask the question, it is appropriate to provide an answer to question 3.

62. I have no doubt that it *was* open to the Commissioner to conclude that Mr Tobin believed that it was appropriate to treat the SPS payment as income in the hands of DTFL, indeed there was compelling evidence that this was so. As soon as the payment was made to Mr Tobin, he transferred it to DTFL, having previously incorporated the company. Critically, the income was returned as income of DTFL for 2011, there was no failure to declare it. It may be that in his Notice of Appeal, Mr Tobin appeared to accept that some of the income should have been returned as his own income but, leaving aside that he appears to have resiled from that admission at the hearing of his appeal, at its height that concession merely reflected his position at the time of his appeal, not his belief at the time he made his return.

63. All of the facts which Revenue identifies as belying any belief on the part of Mr Tobin that the income was that of DTFL are, in truth, matters which support Revenue's case that the income was and should have been treated as that of Mr Tobin, or even that it should have been clear to Mr Tobin that it was his own income. None of it compels a conclusion that Mr Tobin did not believe that his return was full and true.

64. Revenue in its submissions identify a series of matters, relating to the timing of the application for the SPS payment and the date of incorporation of the company. The facts relied on by Revenue may support an argument that Mr Tobin *should have known* that the SPS payment was income in his hands for the chargeable period, but not that, at the time he made his return, he believed that that was the case. Although the evidence was that Mr Tobin was advised to, and did, make the SPS payment in his own name, in circumstances, where the farming business to which the SPS payment related had been transferred to DTFL, this does not in any sense compel a conclusion by the Commissioner that Mr Tobin did not

believe, having transferred his business and his herd number to DTFL by the time the payment was received, that the payment was not the income of DTFL.

65. Of course, the factors identified by Revenue were not the only evidence before the Commissioner. Mr Tobin's adviser gave evidence that the entitlement to the SPS payment revolves around a herd number, which in this cases transferred to DTFL in June 2011. Mr Tobin gave evidence that he had been advised by DAFM that the entitlements transferred with his herd number. Revenue's own witness accepted that, from the company's point of view, the issue was "a little bit difficult" and "complex".

66. As set out above, in a case stated, a party faces a high threshold in seeking to displace primary findings of fact made by the decision maker. The Commissioner expressly concluded that Mr Tobin was a "*credible witness and his evidence believable"*. In my view, Revenue has not come close to establishing a basis for this court displacing the Commissioner's finding of fact that Mr Tobin believed that the SPS payment should be treated as income in the hands of DTFL. Accordingly, the answer to the third question posed in the Case Stated must be "no".

Conclusion

67. For the reasons set out above, I answer the questions posed in the case stated in the following way:

i. Did the Commissioner err in law in the interpretation of section 955(2) TCA 1997?
   YES
ii. Was the Commissioner correct in her application of section 955(2) TCA 1997?
   NO
iii. Did the Commissioner err in law in making primary findings of fact which it was unreasonable for her to make because the evidence did not support such findings and/or the evidence pointed to the contrary position, namely that Mr Tobin believed the SPS payment was income in the hands of DTFL and not income in the hands of Mr Tobin?
   NO

68. I will list the matter on 3 May 2024 at 10.30 am for the purpose of making final orders.