THE HIGH COURT

[2026] IEHC 628

Record No. 2024/352R

BETWEEN

THE REVENUE COMMISSIONERS

APPELLANT

AND

AOIFE QUINN

RESPONDENT

Judgment of Ms. Justice Siobhán Stack delivered 11th day of September, 2026.

Introduction

1. This is an appeal by the Revenue Commissioners (*"Revenue"*) from a Determination of the Tax Appeals Commission (*"TAC"*) dated 24 June, 2024 (*"the Determination"*) pursuant to s.949 AP of the Taxes Consolidation Act, 1997 (*"the TCA"*).

2. The Determination was concerned with Notices of Assessment made against the respondent (*"Ms. Quinn"*) on 21 December, 2016, in respect of the tax years 2011 and 2012. Those assessments were in the nature of amended assessments to income tax in the amount of €256,845 for 2011 and €44,873 for 2012, making a total amount of €301,718. These assessments related to purported income received by Ms. Quinn as an employee of three companies registered in Russia: Finansstroyinvestment LLC (*"Finansstroy"*), Red Sector LLC

(*"Red Sector"*), and CJSC Logistica (*"Logistica"*) (cumulatively, *"the Russian Companies"*). The ultimate owner of each of the Russian Companies was the Quinn Group, which had been established by Ms. Quinn's father, Mr. Seán Quinn, Senior, in the 1970s and of which Ms. Quinn and her siblings were shareholders.

3. Ms. Quinn had declared income from her employment with each of the Russian Companies in her tax returns for the tax years 2011 and 2012 and claimed transborder relief on the income declared, which, I understand, applies where tax has been paid on foreign income in a country with which this State has a double taxation treaty. Essentially, the amount of tax paid abroad is deducted from the income tax payable in this State. The income declared for 2011 was €447,639, and for 2012, was €91,639, a total of €539,278. Transborder relief in the sum of €170,524.21 was claimed in 2011 and similar relief in the sum of €30,000.72 was claimed for 2012, resulting in a total claim for relief in the sum of €200,524.93. These are cumulative figures relating to all three companies.

4. While the box to indicate a doubt was not ticked in either return, Ms. Quinn included a note in each return to the following effect:

> *"(A)There is a dispute over the level of tax paid at source in Russia. B) Anglo are disputing the Russian payments, on the basis they believe they are in breach of a Court order and C) there may also be litigation in Russia seeking return of these funds."*

5. Subsequently, on 21 May, 2014, Ms. Quinn filed amended tax returns for both years, entirely removing the reference to income from all three of the Russian Companies. However, Revenue issued Amended Notices of Assessment in respect of both tax years on 21 December, 2016. These required Ms. Quinn to pay income tax in the sum of €256,845 for the tax year 2011 and €44,873 for the tax year 2012, a total of €301,718.

6. Ms. Quinn appealed those assessments to the Tax Appeals Commission (*"TAC"*). It seems on a fair reading of the Notices of Appeal lodged against each of the Amended Notices of Assessment that she did so on the basis that she was required to repay the monies received from all three of the Russian companies. As her agent put it in the Notice of Appeal against the Amended Assessment for 2011:

> *"[O]ur client has not made a profit or gain as a result of a Russian employment in the year 2011 which could be taxable. Therefore, as outlined above we dispute the inclusion of this income in our client's assessment."*

The same point is made in exactly the same terms in the Notice of Appeal against the Amended Assessment for 2012.

7. The Appeals were lodged on 20 January, 2017, and were stayed for several years pending the outcome of litigation between Ms. Quinn and other Quinn family members and IBRC, in particular, proceedings entitled *Irish Bank Resolution Corporation Limited (In Special Liquidation) v. Sean Quinn and others*, High Court Record No. 2011/5843P (*"the Conspiracy Proceedings"*) in which IBRC claimed that the defendant members of the Quinn family, including Ms. Quinn, had engaged in a conspiracy to put the assets of the Quinn Group beyond the reach of IBRC, a significant creditor of the Group. Those proceedings were ultimately settled in 2019.

8. The result was that the hearing before TAC did not take place for many years after lodgement of the Notices of Appeal and indeed after the settlement of the Conspiracy Proceedings in 2019. When it did proceed, Ms. Quinn pursued the fundamental point outlined in the Notices of Appeal, which was that she should not be regarded as having foreign income in 2011 and 2012 because she had been ordered by the Russian courts to return the monies received.

9. In her appeal to TAC, Ms. Quinn also argued that she should be deemed as a matter of law to have returned the monies received by her from the Russian Companies and therefore to have complied with the Russian Judgments (as opposed to contending that she had in fact repaid any specific sum). This argument was based on various submissions to the effect that Ms. Quinn should be deemed to have repaid the money by reason of: the seizure of certain of her assets by receivers appointed by IBRC, by reason of her consent to entry of judgment against her in a sum of over €88 million as part of the 2019 Settlement of the Conspiracy Proceedings, and/or by the application of the Rule in *Clayton's* case (1816) 1 Mer. 572. However, TAC rejected these arguments and there is no appeal from that aspect of the Determination. The result is that it can now be taken, at least for the purposes of this Case Stated, that Ms. Quinn never in fact repaid the monies received.

10. In addition to those points, Ms. Quinn argued before TAC that the income which she had received from the Russian Companies was income from an *"unlawful source or activity"* within the meaning of s. 58, TCA, which provides (in material part):-

> *"(1) Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made*
>
> > *(a) the source from which those profits or gains arose was not known to the inspector,*
> >
> > *(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or*
> >
> > *(c) <u>the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity</u>,*
>
> *and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.*

(2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) …

shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as "miscellaneous income", and in respect of such profits and gains so assessed—

(i) the assessment—

(I) …

(II) shall not be discharged by the Appeal Commissioners or by a court by reason only of the fact that the income should apart from this section have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity …." [Emphasis Added]

11. Section 58 (1)(c) – the only subparagraph in issue in this Case Stated – provides that s.58 is only engaged where the inspector of taxes knows, as of the date of the making of an assessment, that the income the subject of the assessment is derived from an unlawful source or activity. Where the section is engaged, s. 58 (2) provides that the income in question will be charged to tax under Case IV of Schedule D and shall be described in the assessment as "*miscellaneous income*".

12. Relying on s. 58, and in particular, on subs. (2), Ms. Quinn contended before TAC that the Amended Notices of Assessment were invalid because they described the income as "*Russian Income-Self*" and not as "*miscellaneous income*" as required by section 58.

13. She also contended that Revenue had incorrectly assessed her to income tax by reference to Case III of Schedule D under which income from a *"foreign possession"* is charged to tax. It is conceded the *"foreign possession"* includes income from foreign employment. While the Amended Notices of Assessment do not themselves identify the precise

Case under which Ms. Quinn was assessed to tax, it is conceded by Revenue that Ms. Quinn was assessed to tax by reference to Case III, and this is possibly implicit in the use of the words "*Russian income – self*" on the face of the Amended Notices.

14. The correctness of these arguments depends on whether s. 58 applies. This in turn requires a consideration of whether the income derived from the purported employment contract with Finansstroy may be said to be derived from an unlawful source or activity, and whether it can be said that the unlawful nature of the income was *"known to the inspector"* at the time the Amended Notices of Assessment were made.

15. In making these arguments, Ms. Quinn does not contend that the unlawful nature of the source of the income makes any difference to the rate or amount of tax payable. She concedes that income is chargeable to tax even if it is derived from an *"unlawful"* source. However, she argues that the technical defects in the amended Notices render them invalid. She further contends that the statutory time limits for amending or reissuing the Amended Notices of Assessment have expired, with the result that she is not liable to pay income tax on the monies received from the Russian Companies.

16. Ms. Quinn's case before TAC and before this Court is, therefore, a purely technical one: she acknowledges that the payments received are taxable as income and that the tax payable is in the amount identified in the Amended Notices of Assessment. However, she says that the Amended Notices are invalid as they do not use the wording specified in s. 58, and that she can no longer be assessed to tax.

17. Ms. Quinn was partly successful before TAC, which allowed her appeal in respect of the payments received from Finansstroy, from whom Ms. Quinn received the greater part of the payments: €299,099.58 in 2011 and €52,365.28 in 2012. The outcome of the appeal to TAC therefore, was that of the total sum of €539,278 received from the Russian Companies in 2011 and 2012, Ms. Quinn succeeded in setting aside the assessment to tax on the greater part of it – a sum of €351,464.86.

18. Ms. Quinn was unsuccessful in her appeal against the assessment to tax in respect of the income from Red Sector and Logistica but she has not appealed any aspect of the Determination of TAC. The only issue before this Court is Revenue's appeal against the Determination of TAC so far as it relates to Finansstroy.

19. The key factor which persuaded the Commissioner to distinguish between the income received from Finansstroy on the one hand and that received from Red Sector and Logistica on the other was that, in 2014, the Russian courts ordered Ms. Quinn to repay the monies received from Finansstroy and the Commissioner found that Revenue were aware of the existence of those judgments before the Amended Notices of Assessment were made on 21 December, 2016. This persuaded the Commissioner that the unlawfulness of the income received from Finansstroy was "*known to the inspector*" on the date on which the Amended Notices of Assessment were made. However, he imputed no such knowledge to the inspector as regards Red Sector and Logistica because no comparable judgments had been obtained in respect of the income received from those companies.

20. Revenue argue that the finding that they were aware of the unlawfulness of the monies received from Finansstroy is an error because, while they had been told by Ms. Quinn that the Russian Judgments (which are referred to in more detail below) had been obtained, and that their effect was to order her to return the monies, they had not been told anything about the basis on which the Russian Courts had made those orders. In particular, Ms. Quinn never gave them a copy of the Russian Judgments in either their original form (i.e., in the Russian language), or in translation. As a result, Revenue say they did not *"know"* as of 21 December, 2016, when the Amended Notices of Assessment issued, that the income was from an unlawful source or activity.

21. In fact, it appears that Revenue only obtained a copy of the Russian Judgments when the Notices of Appeal of 20 January, 2017, were received, as these disclosed for the first time the Record Number of the Russian proceedings. This enabled Revenue to procure copies of Judgments by means of their own research. The material point is that no copy of the Russian Judgments, in either Russian or English, was ever furnished to Revenue prior to 21 December, 2016. In fact, as will become clear from the analysis of the correspondence set out below, it was never made clear to Revenue at any time prior to 21 December, 2016 that the Russian Judgments applied only to Finansstroy and not to the other two companies, nor did Ms. Quinn ever give any indication of the basis on which the Russian courts had ordered the return of the monies.

22. Before turning to the precise issues in this Case Stated, it is convenient to set out some of the background to the case, including, in particular, the facts and circumstances relating to the entry into the employment contract with Finansstroy and some greater detail relating to the Russian Judgments. However, it must be borne in mind that those facts and circumstances were not made known to Revenue prior to the making of the Amended Notices of Assessment, nor were any details of the Russian Judgments ever provided to Revenue by Ms. Quinn. They are not matters relied upon by the Commissioner as a basis for his finding that Revenue were aware of the unlawful nature of the employment contract at the time the Amended Notices of Assessment were made, and are included here, first, to provide the context in which the Determination was made, and secondly, to contrast the information which was before TAC with the much more limited information which was given to Revenue prior to 21 December, 2016.

Ms. Quinn's "employment" in Russia

23. Ms. Quinn's contract of employment with Finansstroy was dated 15 June, 2011. She says that she travelled to Moscow, where she stayed for no more than two nights, and attended at Finansstroy's premises to sign the contract. The document she signed was in Russian. As Ms. Quinn does not speak or read Russian, she did not read this contract, but she signed it anyway and left the premises. She never did any work for Finansstroy or any of the Russian Companies.

24. In essence, Ms. Quinn claims that the monies received by her from the Russian Companies in 2011 and 2012 were *"cash extraction mechanisms"* designed to divert the assets of those companies for the benefit of Ms. Quinn and her family, primarily – she says – to finance litigation which was ongoing in this jurisdiction at the time. The payments never related to genuine employment, and she was nominally employed as head of the economy and finance department, despite having no qualifications for such a role. In fact, it is not clear that Finansstroy had any such department.

25. Her salary was to be RUB 1 million a month, with a semi-annual bonus of RUB 1.5 million (net of tax), and the manner in which she was paid was certainly unusual: she would receive a text message from her cousin, Peter Darragh Quinn, who was a director of Finansstroy, advising her to withdraw monies in cash from ATMs, presumably in this State or in Northern Ireland, from accounts held abroad. (The correspondence with Revenue in connection with her 2011 and 2012 tax returns suggests that Revenue was not satisfied that she had disclosed all of her foreign bank accounts, but nothing turns on that for the purposes of this Case Stated.) At times, she would also receive payments simply by using the card on those accounts for purchases at points of sale – again, presumably in this jurisdiction or in Northern Ireland.

The Russian Judgments

26. On 12 May, 2011, an insolvency (bankruptcy) petition was presented in Russia, and this was accepted for hearing on 21 June, 2011. The payments were made to Ms. Quinn between 2 August, 2011, and 25 April, 2012. Finansstroy was adjudged insolvent by the Commercial Court of Moscow on 3 August, 2012. In 2012, the Russian bankruptcy administrator of Finansstroy issued proceedings in the Russian courts seeking the return of the payments by Finansstroy to Ms. Quinn.

27. At first instance, the Moscow Arbitrazh (Commercial) Court was satisfied that Ms. Quinn had been properly notified of the proceedings but noted that she did not appear nor did she enter a defence. It was noted that Finansstroy did not have a permit to employ foreign workers, and that Ms. Quinn was hired as a "*highly skilled specialist*" despite no evidence having been produced that she had any work experience, skills or achievements in any specific area of activity, nor was it apparent that her alleged role required any special skill. It was found that the amounts paid were excessive, given the nature of the work and given that the contract provided that Ms. Quinn could work from home.

28. In the decision which issued from the Moscow Arbitrazh Court on 15 November, 2013, (although the operative part of the decision had previously been announced on 24 June, 2013), that Court determined that the so-called employment contract with Finansstroy was invalid as it was aimed at violating the rights and legitimate interests of Finansstroy's creditors and directed Ms. Quinn to return the sum of over RUB 12.5 million which she had received.

29. Ms. Quinn appealed to the Ninth Arbitrazh Appellate Court in Moscow on the basis that she had not been notified of the proceedings before the Arbitrazh Court. She did not appeal on any other ground. The Appellate Court announced the operative part of its judgment on 17 February, 2014, and issued its full judgment on 19 February, 2014. The Appellate Court was satisfied that Ms. Quinn had been properly served with notice of the proceedings at first instance and dismissed the appeal.

30. These decisions of the Moscow Arbitrazh (Commercial) Court and of the Ninth Arbitrazh Appellate Court in Moscow are referred to in this judgment as *"the Russian Judgments"*.

Issues in the Case Stated

31. The Commissioner has stated three questions for determination by this Court, as follows:

1. Did the Appeal Commissioner err in law in determining that the income from Finansstroy could only be charged and assessed to income tax under s. 58 of the TCA 1997 and Case IV of Schedule D, and was not correctly charged and assessed under Case III of Schedule D as income from a foreign possession?
2. Did the Appeal Commissioner err in law in concluding that Revenue was aware of the unlawfulness of the Finansstroy activity or source by 21 December, 2016, the date when the amended assessments were raised?
3. Did the Appeal Commissioner err in law in finding that he had no power to amend the assessments so as to charge the Finansstroy income under Case IV of Schedule D rather than under Case III?

32. The first question turns largely on whether TAC erred in law in finding that the income from the Russian Companies was from an *"unlawful"* source or activity. On that issue, Revenue argued before this Court that TAC had erred because *"unlawful"* meant contrary to the criminal law, not civil law. Revenue also sought leave to argue that *"unlawful"* in s. 58 means that the income is derived from an activity which is contrary to the criminal law of this

State, rather than any other state. This application to argue a point not argued before TAC was made in reliance on the principles governing similar applications to appellate courts, as set out in *Lough Swilly Shellfish Growers Co-Operative Society Ltd. v. Bradley* [2013] IESC 16, [2013] 1 I.R. 227.

33. The third question is whether, if there was an error on the face of the Amended Notices, the Commissioner had a power to amend them, so as to use the wording mandated by s. 58. As part of the arguments on this third question, Revenue submit that this Court likewise has a power of amendment, which it is invited to exercise.

34. However, it is not necessary to answer either the first question (so far as it turns on the correct definition of *"unlawful")* or the third question in the Case Stated as the appeal can be decided by reference to the second question which asks whether TAC erred in law in concluding that it was *"known to the inspector"* at the date of the Amended Notices of Assessment that the Finansstroy income was derived from an unlawful source or activity. I am satisfied that TAC did err on this point, and the consequence of that finding is that s. 58 does not apply and that the Amended Notices of Assessment are valid.

Consideration of Question 2

35. The Commissioner acknowledged that there was *"no single piece of evidence ... which conclusively proves whether or not [Revenue] knew that the source of the payments for Finansstroy was unlawful when it made the amended assessments"*. However, he considered that certain aspects of the evidence, identified on the face of the Determination at paras. 115 to 124, supported a finding that the Inspector was aware of the unlawful nature of the source of the income.

36. Having considered the matters relied upon by the Commissioner for inferring that Revenue knew of the unlawful nature of the source of the income from Finansstroy as of 21 December, 2016, I am of the view that this inference was not one which was open to the Commissioner based on the evidence identified in the Determination as being the basis for his conclusion on this issue.

37. It is convenient to begin by considering the principal category of evidence which was relied upon by the Commissioner, which was the correspondence between Ms. Quinn and Revenue between the filing by her of amended tax returns on 21 May, 2014, in which the declaration of Russian income from all three companies was entirely removed, and the making of the Amended Notices of Assessment on 21 December, 2016. This correspondence must be considered in some detail. In doing so, it should be noted that the contents of the documentation put before Revenue are not controversial and this court is in a position to interpret those documents for itself: *Mara v. Hummingbird Ltd.* [1982] I.L.R.M. 421, at p. 426.

Correspondence between Ms. Quinn and Revenue prior to 21 December, 2016

38. The first item of correspondence is a letter from Ms. Quinn's agent dated 24 March, 2013. This responded to queries raised by Revenue on foot of the original returns, which, it will be recalled, sought transborder relief – presumably on the basis that it was claimed that tax had already been paid on the income in Russia. So far as these queries related to the Russian income, it seems that Revenue had sought proof of payment both of the income and of Russian tax. More pertinently for the purpose of this Case Stated, Revenue had sought *"documentation in relation to Anglo's dispute regarding these payments"*. (This is a reference to para. (B) of the note to the original tax returns, and not to para. (C), which mentions the litigation in Russia.)

39. Ms. Quinn's agent, in her letter of 24 March, 2013, included an extract (in fact only two paragraphs, paras. 1 and 81) from an affidavit of Mr. Richard Woodhouse of IBRC, sworn 17 October, 2012, in the Conspiracy Proceedings. This extract is critical to the findings of TAC and it is necessary to consider it fully.

40. Para. 1 is the usual means of knowledge clause and this extract appears to have been included for the purpose of identifying Mr. Woodhouse and his role within IBRC. The key extract is para. 81 in which Mr. Woodhouse stated:

> *"The payments to individuals comprised Quinn family members and employees; including Mr. Golyshev, under the guise of salaries and bonuses. Most of these payments were made from the company's bank account with Raiffeisen bank, with some coming from Ocean Bank. I am advised Mr. Sherykhanov [Finanasstroy's bankruptcy adjudicator] has taken the view that these payments were fraudulent and/or excessive and that they constitute unjust enrichment. I'm advised that proceedings have been issued in Moscow by Mr. Sherykhanov for the recovery of said funds on behalf of Finansstroy."*

41. This letter apparently did not reach Revenue until a copy of it was sent under cover of a further letter dated 22 July, 2014. However, it is accepted that Revenue had received the letter and enclosed extract from Mr. Woodhouse's affidavit by 21 December, 2016.

42. Having said that, if Ms. Quinn's agent did not send the letter of 24 March, 2013, until July, 2014, it has to be said that that was not consistent with either clear communication or full disclosure on her part, given that the letter of 24 March, 2013, is directed towards the claim for transborder relief, which had been entirely abandoned by the filing of amended Tax Returns in May, 2014.

43. At any rate, it seems that no later than July, 2014, Revenue had been given the paragraph from Mr. Woodhouse's affidavit which set out, in very basic terms, what he had been told was the basis for the application by Finansstroy's bankruptcy adjudicator to the Russian courts. Furthermore, the description of the claim in Mr. Woodhouse's affidavit did not limit the grounds of the application to illegality alone: a finding that payments were *"excessive"*, for example, could be made on grounds other than unlawfulness.

44. There was then a meeting between Revenue and Ms. Quinn and her representatives on 2 October, 2014, which is considered in more detail below.

45. Following on from the meeting of 2 October, 2014, Ms. Quinn's agent wrote to Revenue by letter dated 17 November, 2014, stating, (*inter alia*):

> *"Our client's Russian employers have been successful in securing judgment through the Russian Court that our client has no entitlement to the income referred to ... above."*

It will be noted that this letter refers to Ms. Quinn's *"employers"* and refers to the effect of the Russian Judgments as determining that Ms. Quinn was not entitled to the income originally declared. There was no reference to any illegality or any finding of illegality. Furthermore, by referring to *"employers"* in the plural, the letter gave the inaccurate impression that the Russian Judgments applied to all three Russian Companies. In addition, the use of the words *"employers"* and *"income"* apparently represented that the Russian Companies could legitimately be regarded as Ms. Quinn's employers.

46. There is nothing in this letter which would suggest that the employment contracts were bogus or that the payments received on foot of them were illegal. The purpose of the letter in fact seems to be to try to persuade Revenue that Ms. Quinn should not be assessed to income tax at all because she was obliged to repay the money (though she had not in fact done so).

47. There is then a very long gap in the correspondence before the Court. The next letter is one from Revenue to Ms. Quinn, dated 19 December 2016, in which Revenue state:

> *"**Russian income***

The letter on (sic) 24 March 2013, a copy of which was submitted with your letter of 22 July 2014 did not include evidence of the payment by the Russian employers as set out at point 3 of that letter.

At our meeting on 2 October it was agreed that the circumstances surrounding the payment of the Russian income would be put in writing. I have no record of receiving any correspondence on this matter apart from the letter on 17 November 2014 which states that Ms. Quinn's Russian employers were successful in securing judgment through the Russian courts that Ms. Quinn had no entitlement to the income.

Please clarify whether Ms. Quinn has repaid the income received by her in 2011 and 2012, from the Russian companies, to the Russian companies on foot of the judgment from the Russian Courts. If repaid, please confirm the date repaid and provide evidence of the repayment.

If the money has not been repaid, I require a copy of the documentation received by Ms. Quinn advising her of the legal position regarding the repayment of the money and a translated copy of the Russian Court judgement."

48. By letter dated 20 December, 2016, Revenue wrote to Ms. Quinn as follows:

*"**Russian Income***

As you are aware we have ongoing queries with you in relation to the taxability of income received by Ms. Quinn from a number of Russian companies in the years of assessment 2011 and 2012. To date no evidence has been provided by you or Ms. Quinn to confirm that the income has been repaid to the Russian employers. Ms. Quinn is resident in Ireland and taxable on her world wide income. On the basis that no evidence has been provided to evidence the repayment of the income, Ms. Quinn is considered to have received the income and is taxable in Ireland on the amounts received.

You would be aware that the time limit to amend the income tax assessment for the year 2011 expires on the 31 December 2016. Accordingly in order to protect the interest of Revenue it is necessary that we arrange to amend the income tax assessment for 2011. In addition the income tax assessment for 2012 will also be amended."

The letter then goes on to notify Ms. Quinn's agent of the amounts for which she would be assessed to tax.

49. Bearing in mind that the Court is entitled to interpret the correspondence for itself, it is my view that the correct interpretation of it is that Ms. Quinn's agents were disputing the liability to pay income tax on the basis that she had been ordered to return the payments from Finansstroy, and they consequently could not be regarded as income. Ms. Quinn's agents were not, at the material time, seeking to persuade Revenue that she should be assessed under Case IV rather than Case III on the basis that the income was derived from an unlawful source or activity, an argument which would have conceded that she was liable to income tax. Ms. Quinn's agents were in fact urging upon Revenue that no tax was payable because Ms. Quinn was obliged to repay the monies (although she had not in fact done so).

50. In particular, there was no reference at any point in the correspondence to the factual circumstances on which the Russian Courts relied for a finding that the purported employment contract should be declared invalid on the basis that its sole purpose was to reduce Finansstroy's assets to the detriment of its creditors in the bankruptcy. For example, the Russian Courts relied on the fact that Ms. Quinn did not have the necessary work permit required under Russian Law to take up employment in that country nor did she have the work experience or skills necessary to take up her position as manager of the economy and finance department of Finansstroy. It was also noted that under the contract, Ms. Quinn was supposed to work from home. None of these facts or circumstances relating to Ms. Quinn's purported employment with Finansstroy were ever mentioned in the correspondence with Revenue prior to 21 December, 2016. Neither was there any reference by Ms. Quinn or her agent to s. 58 of the TCA.

51. In fact, there was no reference to s. 58 even in the Notices of Appeal to TAC which were lodged by Ms. Quinn through her agent on 20 January, 2017.

52. Section 4 of the Notice of Appeal, relating to the 2011 tax year, entitled "*Grounds of Appeal*", so far as is material to this judgment, states:

> "*This assessment includes additional foreign income of €447,639. This relates to income that was received by our client from Russian companies of which our client was an employee during 2011. We disagree with the inclusion of this income in our client's assessment as this income is under dispute and there are a number of court proceedings procuring the repayment of this income.*
>
> *For example, in the Russian court case, Kompaniya Finansstroyinvestment Bankruptcy Receiver v. Aoife Quinn Case No. A40-51217/11-24-313 "B" – 15 November, 2013, judgement has been issued against our client deeming this money to have been illegitimately paid to our client and seeking repayment of same.*
>
> *This income is also the subject of a number of other court proceedings, including the following:*
>
> *Irish High Court proceedings – Record No: 2011/5843P – Irish Bank Resolution Corporation Ltd (In Special Liquidation), Quinn Investments Sweden AB and Leif Baecklund v Sean Quinn, Ciara Quinn, Collette Quinn, Sean Quinn Junior, Brenda Quinn, Aoife Quinn, Stephen Kelly, Peter Darragh Quinn, Niall McPartland, Indian Trust AB, Forfar Overseas, Lockerbie Investments SA, Clonmore Investments SA, Marfine Investments Limited, Blandun Enterprises Limited, Mecon FZE, CJSC Vneshkonsult, OOO Stroitelnye Tecknologii , OOO RLC-Developments and Karen Woods.*

As a result of the above legal proceedings, our client is not entitled to the Russian income received and has court orders against her to repay this income. Accordingly our client has not made any profit or gain as a result of a Russian employment in the year 2011 which could be taxable. Therefore, as outlined above we dispute the inclusion of this income in our client's assessment."

53. In Section 3 of the Notice of Appeal, three specific provisions of the TCA are cited, but these do not include s. 58 of the TCA.

54. A Notice of Appeal in identical terms, save as to the reference to the amount and the relevant tax year, was filed against the Amended Notice of Assessment relating to the 2012 tax year.

55. While there is a reference in the Notices of Appeal to the fact that judgment had been issued deeming the money to have been *"illegitimately paid"* there is again no reference to the reasoning of the Russian Courts, the factors on which they relied for their judgments or to any assertion that the employment contracts were bogus in nature. The thrust of the extract from the Notice of Appeal to TAC, quoted above, was that Ms. Quinn's principal submission on appeal would be that she was not entitled to the income, that she had been ordered to repay it and that she had not, therefore, made any profit or gain which was taxable as income. This is quite different from the position now adopted, which is that income was received but has been assessed by reference to the wrong Case and without use of the precise terminology in s. 58.

56. The argument that the income should have been assessed to tax by reference to s. 58 seems to have arisen only in the course of the appeal to TAC, that is, after the lodgement of the appeal papers to TAC.

57. I am satisfied that the correspondence between Ms. Quinn and Revenue, including the extract from Mr. Woodhouse's affidavit, does not support a finding that Revenue *"knew"* as of 21 December, 2016, that Ms. Quinn's employment contract with Finansstroy was bogus and was nothing more than an attempt to put the assets of that company beyond the reach of its creditors, such that the source of the payments to Ms. Quinn should be regarded as *"unlawful"* within the meaning of section 58. All that Revenue had been told was that there were Russian Judgments which required payment of the monies. Revenue had not been given a copy of the Judgments in any language, nor had they been given even the most basic summary of the findings of the Russian Courts. All the Revenue *"knew"* at the relevant time was a very basic description of the basis on which the application had been made by the bankruptcy administrator to the Russian courts, but Revenue had not been given any information about the basis or reasoning of the Russian Judgments themselves and consequently could not have been aware of the nature of the findings contained in those Judgments.

58. Indeed, Revenue had not been given even the most basic identifying information about those judgments, such as their date or record number, and – while I am not finding that Revenue would have been obliged to act on any such basic information in order to inform themselves of the reasoning of the Russian courts in issuing the Judgments – as a matter of fact, they had no information which would have permitted them to make any enquiry. They were reliant on the information given to them by Ms. Quinn, and that information was scant in the extreme.

59. I should add that the Commissioner, at the outset of his consideration of the evidence material to this issue, took into account the fact that in the original tax returns, in the *"Additional Notes"* section, Ms. Quinn had *"made [Revenue] aware that the payments from the Russian Companies were under dispute"*. Unfortunately, I do not think that the Commissioner has correctly interpreted that note, which is already set out at para. 4 above.

60. There is simply no reference to illegality in this note. (A) is a reference to the rate at which tax was allegedly retained at source by the Russian Companies, an issue which is consistent with genuine employment and the claim for crossborder relief. (B) is a reference to an allegation in proceedings in this Court that the contracts might have been contempt of court.

However, the Commissioner did not make any finding that the contracts were unlawful on this basis: his findings were based squarely on the outcome of the Russian proceedings and this is evident from his refusal to find that Revenue was aware of the unlawful nature of the employment contracts with Logistica and Red Sector, given that no judgment had been obtained in Russia relating to those companies. Finally, (C) once again gives only the most general information about the litigation in Russia and – consistent with the approach in the correspondence in the years prior to the making of the Amended Notices of Assessment - is focussed on an obligation to return the monies. There is no hint that the litigation in Russia is grounded on allegations that the contract with Finansstroy was unlawful, as subsequently contended before the Commissioner.

61. In short, the Note to the original tax return does not add anything to the very limited information given elsewhere. Furthermore, this Note does not appear in the amended tax returns, in which no income is declared at all.

62. The Commissioner went on, however, to identify two other matters which he took into account in finding that Revenue was aware of the unlawful nature of the Finansstroy contract at the relevant time.

63. The first of these matters was that Ms. Quinn had given *"clear and consistent"* evidence that she had informed Revenue at a meeting on 2 October, 2014, and therefore prior to the making of the Amended Notices of Assessment, of the existence of the Russian Judgments. The second was that there were a number of judgments of this Court of which Revenue ought to have been aware or could be taken to have been aware, which suggested that Ms. Quinn's employment contract in Russia was unlawful. I will consider each of these in turn.

The meeting of 2 October, 2014

64. The Commissioner found as a fact that Ms. Quinn had told Revenue at the meeting of 2 October, 2014, of the existence of the Russian Judgments. There is no dispute about that, but the question is whether knowledge that there were Russian judgments in existence equated with knowledge of the alleged unlawfulness of the employment contract.

65. Indeed, the later correspondence from December, 2016, already discussed above, demonstrates that Revenue was well aware of the existence of the Russian Judgments but were looking for translated copies of them in order to ascertain what they said.

66. The only realistic way in which Revenue could inform itself as to the precise effect of the Russian Judgments and of their reasoning was by obtaining an English language translation of the Judgments. However, neither Ms. Quinn nor her agent ever supplied a copy of the Russian Judgments in any language. The Commissioner made a finding to that effect (at para. 118 of the Determination, repeated at para. 51 of the Case Stated), and that finding has not been appealed.

67. I digress at this point to say that, notwithstanding the absence of any appeal on this point, at the hearing before this Court, it was suggested that Ms. Quinn had actually given a copy of the Russian Judgments in their original version (that is, in Russian) to Revenue, prior to 21 December, 2016. This suggestion was made by reference to the transcript of the re-examination of Ms. Quinn when giving evidence to TAC. In the absence of any appeal against the finding of the Commissioner, it is not open to Ms. Quinn to rely on the transcript in this way, and the question of whether there was any basis for the Commissioner's finding that Ms. Quinn had never supplied a copy of the Russian Judgments in either English or Russian is simply not in issue in this Case Stated. The submission therefore cannot be accepted.

68. The critical point about the finding that Ms. Quinn had told Revenue at the meeting on 2 October, 2014, of the existence of the Russian Judgments is that that finding does not provide any support for an inference that Revenue was thereby aware of the unlawfulness of Ms. Quinn's employment contract with Finansstroy. Revenue was simply told little or nothing about those Judgments, other than that they had directed Ms. Quinn to repay the sums received by her from Finansstroy. (In fact, Ms. Quinn appears to have given evidence to the effect that she was not herself aware of their contents as she did not speak Russian and had not had them translated.)

69. In short, absent any information about the basis on which the Russian Judgments had been made, it could not be said that Revenue was aware that the contract was unlawful. The very basic information given by Ms. Quinn at the meeting on 2 October, 2014, could never have been sufficient to make Revenue aware that the income was derived from an unlawful source or activity.

The Irish High Court Judgments.

70. At paras. 120-123, the Commissioner referred to three judgments of this Court, the first being that of Dunne J. in the Conspiracy Proceedings, [2012] IEHC 379, as delivered on 26 June, 2012. In that case, Dunne J. stated (at p. 55) that the defendants, of which Ms. Quinn was one, had:-

> *"engaged in a complex, complicated and, no doubt, costly, series of steps designed to put the assets of the IPG beyond the reach of Anglo, in a blatant, dishonest and deceitful manner. They have consciously misled courts here and elsewhere."*

71. The second judgment was that of Kelly J. on 11 December, 2012, [2012] IEHC 510, [2012] 4 I.R. 381 where he quoted from an earlier *ex tempore* judgment of his, and stated at pp. 386 to 387:-

> *"On the evidence which is before me and which is not contradicted, it appears that the Quinn family have created and operated a scheme of mesmeric complexity on a deliberate and premeditated basis which has cynically sought to achieve a twofold purpose. I regret to say that the scheme reeks of dishonesty and sharp practice. Its first object is to place assets which should be available to the plaintiff bank beyond that bank's reach. Its second is to feather the Quinns' own nest."*

72. The Commissioner acknowledged that neither of those judgments referred specifically to Ms. Quinn's purported employment contracts with any of the Russian Companies. He nevertheless considered that they supported the view of Finansstroy's bankruptcy administrator, as related in the extract from Mr. Woodhouse's affidavit.

73. The Commissioner also referred to a third judgment: that of Kelly J., [2013] IEHC 388, of 10 July, 2013, where he commented on the employment contracts of members of the Quinn family, including Ms. Quinn, and described the way in which they received their salaries as *"strange"*. (Kelly J. commented in particular (at para. 65) on the fact that *"[o]n occasions this involved lengthy periods of time being spent extracting cash from an automatic cash dispenser."*) There is no doubt that a reading of this judgment would have raised significant concerns in the mind of any reasonable person about the nature of Ms. Quinn's employment contracts with the Russian Companies, including Finansstroy, and about the true purpose for which they were concluded.

74. However, Revenue was not a party to the proceedings the subject of those judgments and there is, once again, no evidence that this judgment was brought to Revenue's attention or that Revenue was otherwise aware of it prior to the making of the Amended Notices of Assessment.

75. The Commissioner relied on the notoriety of the litigation between the Quinn family and IBRC. However, it cannot be inferred from general public knowledge that such litigation was ongoing that Revenue was aware of the specific circumstances of Ms. Quinn's contract with Finansstroy and, as I am satisfied for the reasons set out below that s. 58 requires actual notice, it cannot be said that Revenue was under a duty to undertake enquiries so as to inform itself of the precise contents of any particular contract.

76. In any event, as the Commissioner implicitly acknowledges by refusing to find that Revenue *"knew"* of the illegal nature of the contracts with Logistica and Red Sector, the Irish High Court Judgments, even taken together, could not amount to knowledge of the kind required to engage section 58. The Commissioner distinguished between Finansstroy and the other companies on the basis that the Russian Judgments applied only to Finansstroy. It follows that, without evidence relating to the Russian Judgments, the Commissioner would not have made a finding of knowledge on the part of Revenue in relation to any of the three companies on the basis of the Irish High Court Judgments.

77. In my view, the Irish High Court Judgments do not support a finding that Revenue was aware of the unlawfulness of a specific contract with which they are not concerned. In the absence of any specific reference to Ms. Quinn's employment contract with Finansstroy, the judgments could only, at best, raise doubts as to the propriety of Ms. Quinn's conduct and might raise a suspicion that the contract might not be genuine. However, that would not be sufficient to amount to actual knowledge on the part of Revenue that the contract was bogus and unlawful. The most that could arise from these judgments is that Revenue might be put on some kind of enquiry.

78. However, I am satisfied for two reasons that Revenue is correct in its submission that it has no duty of inquiry and that actual knowledge is required before s. 58 will be engaged.

79. First, the wording of s. 58 (1)(c) seems to demand that the Revenue Commissioners in fact knew of the unlawfulness. Where a statute intends to fix a person with constructive knowledge, the usual phrase used is that the person *"ought to have known"*. However, s. 58 (1)(c) provides that the unlawfulness must have been *"known to the inspector"*, which, in its natural and ordinary meaning, refers to actual knowledge.

80. Secondly, the legislative history of s. 58 also supports a finding that actual, rather than constructive, knowledge is required. Section 58 is a reenactment of s. 19 of the Finance Act, 1983, which was in turn introduced to reverse the effects of earlier caselaw, including *Hayes v. Duggan* [1929] I.R. 406, in which the former Supreme Court held that Parliament had not intended that the Income Tax Act, 1918, would apply to the profits or gains derived from a trade which was *"a wholly unlawful business or enterprise or transaction"* (*per* Kennedy C.J. at p. 418).

81. More pertinently for the purposes of this discussion, FitzGibbon J. stated in *Hayes v. Duggan* that the principle that no one can rely on his or her own wrong would prevent a taxpayer from disputing the assessment to tax of the profits or gains derived from part of an activity which was, in general, permitted. The application of that principle would largely prevent taxpayers from relying on their own unlawful actions to escape liability to tax.

82. However, in the later case of *Collins v. Mulvey* [1956] I.R. 233, Davitt P. did not apply that principle in circumstances where Revenue had raised an assessment to income tax on the profits and gains derived from unlawful slot machines and pinball tables even though they were already aware that the activity in question was unlawful.

83. That finding was made on the quite specific factual basis that Revenue *"were in fact aware"* (see p. 246) of the criminal character of the appellant's business because there had been a previous tax appeal in relation to the tax years immediately preceding those in issue before him in the course of which the Circuit judge had found that the entire of the appellant's enterprise was wholly criminal and unlawful, and it had been explicitly accepted by Revenue that the character of that enterprise had not altered.

84. In a passage which is, in my view, applicable to this Case Stated, Davitt P. stated the general position, which would apply absent such knowledge on the part of Revenue, in the following terms:

> *"I am not convinced by [senior counsel for the appellant] in his attempt to show* a priori *that the Revenue authorities must have been, and therefore were, aware of the criminal character of the appellant's business. If the matter as between the appellant and the Revenue had been* res integra*, and the appellant in making his return for income tax purposes had merely returned his income as being derived from his business of placing out slot machines in the manner found, without giving any particulars as to the nature of the machines, I think the Inspector would have been entitled to accept this at its face value. There are many types of automatic slot machines whose character is wholly innocuous. There is a presumption against the commission of crime; and I think the Inspector would be entitled to presume that the business was innocent. I cannot see that he was under any duty to undertake an investigation, in the nature of a police inquiry, in order to satisfy himself that the business was as it should be presumed to be. Moreover, the issue whether or not a business is unlawful and criminal might involve difficult questions of fact and law which the Inspector, who would not necessarily be a person trained and experienced in such matters, might not be adequately equipped to determine."* [Emphasis added.]

85. Of course, the relevant law is now contained in section 58. However, the purpose of enacting that provision appears to have been to reverse the effect of judgments such as *Hayes* *v. Duggan* and *Collins v. Mulvey*, and to confirm that income from an unlawful source or activity is chargeable to tax even though Revenue are aware at the time of the making of an assessment of the unlawfulness concerned. As such, *Collins v. Mulvey* illustrates the type of circumstances in which it might be said that it was *"known to the inspector"* that the source of the income was unlawful. The judgment in my view makes it clear that actual knowledge was required before Revenue would be precluded from raising an assessment, and it is to a situation where Revenue has actual knowledge that s. 58 (1)(c) is addressed.

86. There is, therefore, no duty on the Revenue to look behind the statements of the taxpayer in the tax return. The original tax returns expressly declared income from the Russian Companies and indeed claimed substantial sums by way of transborder relief on the income received.

87. In my view, the Commissioner erred in relying on passages from High Court judgments which, although presumably publicly available and therefore potentially available to the Revenue, were never brought to Revenue's attention prior to the making of the Amended Notices of Assessment. The Commissioner himself acknowledged that there was no evidence that any of the High Court judgments to which he referred had been brought to the attention of Revenue prior to 21 December, 2016. They seem to have been relied upon *ex post facto* at the hearing before TAC. As such, even if they were sufficiently relevant to justify a finding that this particular employment contract was bogus and unlawful, as there was no evidence that Revenue was actually aware of them at the relevant date, it could not be inferred from their existence and publication that Revenue *"knew"* that Ms. Quinn's contract with Finansstroy was unlawful.

88. Furthermore, Revenue was not a party to any of the proceedings to which the High Court judgments referred to by the Commissioner related. The facts of this case are therefore quite different from those in *Collins v. Mulvey* where specific findings of illegality of the taxpayer’s activity had already been made in a tax appeal to the Circuit Court to which Revenue had been a party. Those findings of the Circuit Court had related to activity taking place in earlier tax years, but Revenue had conceded that it did not differ from the activities of the taxpayer in the tax years at issue in that case.

89. I am therefore satisfied that the Irish High Court judgments, whether taken cumulatively or separately, could not justify an inference that the Revenue knew of the unlawfulness of Ms. Quinn’s employment contract with Finansstroy before the Amended Notices of Assessment were made.

Conclusion

90. I am of the view that TAC erred in law in making the finding at para. 118 of the Determination that Revenue knew, as of November, 2014, that the Russian Judgments directed Ms. Quinn to repay payments received from Finansstroy on the basis that they *"were fraudulent and/or excessive and that they constitute[d] unjust enrichment."* To understand the basis on which judgments are delivered, it is necessary to be aware of the court's reasoning, not of the claim made.

91. In summary, Revenue had only been told that Russian Judgments required repayment of the sums received. Revenue had not been informed of the basis on which those orders had been made and there was no basis for inferring from the very minimal information before Revenue as to the basis on which the application had been made, that Revenue was thereby aware of any finding of illegality by the Russian Courts.

92. In short, the correspondence following the filing of the amended tax returns merely alleged that the payments had to be returned and therefore should not be regarded as income. But the reasons why the repayment had been ordered by the Russian Courts were never stated, clearly or otherwise.

93. TAC seems to have inferred from the evidence that Russian Judgments were in existence directing repayment of the monies, together with some minimal information as to the basis on which the application to the Russian courts was originally made, that Revenue was thereby aware of the reasons why such an order was made. This does not follow.

94. TAC also took into account general findings by this Court of unlawful behaviour by Ms. Quinn's family, including conspiracy to defraud the creditors of the Quinn Group, as evidence on which Revenue could rely to make specific findings about the illegal nature of the Russian income. However, not only were these judgments dealing with issues other than the lawfulness of Ms. Quinn's purported contract with Finansstroy, but there was no obligation on Revenue to conduct its own investigation of the legality of the source of income. Revenue was entitled to rely on the initial declaration of income made by Ms. Quinn and on the specific information – such as it was – furnished by her to Revenue, in connection with this issue.

95. In short, I am satisfied that TAC drew an inference about Revenue's knowledge on 21 December, 2016 which no reasonable decision-maker would have drawn, in the sense in which that term is properly understood.

96. The answer to the second question in the Case Stated is: Yes. As a result, s. 58 does not apply.

97. In making this finding, I wish to stress that TAC was faced with a complex factual situation which was being presented with the benefit of hindsight and for the purposes of making an argument which had never been made to Revenue prior to the making of the amended assessments on 21 December, 2016. Indeed, the argument is not adverted to in Ms. Quinn's formal Notices of Appeal to TAC. The Commissioner was also faced with elaborate arguments about the effect of various court orders in this jurisdiction and the law relating to whether Ms. Quinn should be deemed to have repaid the monies received from the Russian Companies, together with expert evidence on Russian law and the precise effect of the Russian Judgments. The appeal by way of this Case Stated relates only to a portion of the findings in the Determination, many of which have been accepted by the parties as being correct.

98. I will hear the parties early in the new legal year as to the Orders which should be made on foot of this judgment. I will hear the parties, in particular, as to whether I should also answer the first question in the affirmative, given that s. 58 (1)(c) provides that knowledge on the part of the inspector at the time of the making of the assessment is required in order to engage s. 58 at all. It would seem to follow that, as s. 58 is not engaged, Revenue were entitled to assess the income to tax by reference to Case III as a *"foreign possession"*.