



**01TACD2017**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim for exemption in relation to section 564 of the Taxes Consolidation Act 1997 as amended ("TCA 1997").

**Background**

2. In 2011 the Appellant received € **X AMOUNT** from **Energy Company A** in respect of the grant of a series of rights, allowing **Energy Company A** to erect electricity pylons and a 100kV line on the Appellant's lands. The Appellant's lands were under forestry and the Appellant agreed that an area of forest would be cleared to make way for the pylons.
3. The Appellant contended that part of the consideration received was attributable to the disposal of trees growing on the land and the Appellant claimed an exemption pursuant to section 564 TCA 1997.

**Legislation**

*Section 535 TCA 1997 – Disposals where capital sums derived from assets*



- (1) In this section, “capital sum” means any money or money’s worth not excluded from the consideration taken into account in the computation of the gain under Chapter 2 of this Part.*
- (2) Subject to sections 536 and 537(1) and to any other exceptions in the Capital Gains Tax Acts, there shall be for the purposes of those Acts a disposal of an asset by its owner where any capital sum is derived from the asset notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph shall apply in particular to –*
- (a) Capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset*
  - (b) Capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset.*
  - (c) Capital sums received in return for forfeiture or surrender of a right or for refraining from exercising a right, and*
  - (d) Capital sums received as consideration for use or exploitation of an asset*

....

*Section 564 TCA 1997 – Woodlands*

- (1) In the computation under this Chapter of the gain accruing on the disposal by an individual of woodland, there shall be excluded –*
- (a) Consideration for the disposal of trees growing on the land, and*
  - (b) Notwithstanding section 535(2), capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such land*
- (2) In the computation under this Chapter of the gain, so much of the cost of woodland as is attributable to trees growing on the land shall be disregarded.*
- (3) References in this section to trees include references to saleable underwood.*



## Submissions and analysis

4. The Respondent submitted that the consideration of € **X AMOUNT**, received by the Appellant, represented a capital sum for the use or exploitation of an asset in accordance with section 535(2)(a)(iv) TCA 1997. The Appellant accepted that this provision applied, but contended an exemption arose pursuant to section 564 TCA 1997, in respect of the consideration which related to the disposal of trees growing on the land.
5. The operative part of the deed in respect of the grant of rights provides: '*... the Grantor, the registered owner, as beneficial owner, HEREBY GRANTS unto **Energy Company A** full and free right, liberty and licence for **Energy Company A**, its successors and assigns, to place and retain posts, pillars, pylons, steel masts, wooden structures and other equipment and installations to carry wires, cables or other things necessary for the transmission of electricity in or over the portion of the lands hatched in red on the map annexed hereto and for the purpose of inspecting, repairing and maintaining any such wires cables and other things now or to be so erected or installed to enter upon the said portion of the lands hatched in red on the said map doing thereby as little damage as possible and making compensation for the damage thereby caused.*'
6. A preliminary point arises as to whether the grant of rights comprises a licence as opposed to an easement. An easement can be described generally, as a right enjoyed over the lands of another. Common examples include; a right of way, a right to light and a right over water. A licence, on the other hand, is a contract which grants the entrant permission to enter onto the lands and which protects the entrant against trespass. If the grant of rights amounts to a licence, there is no "*disposal ... of woodland*" for the purposes of section 564 TCA 1997 and the exemption does not apply.
7. The Appellant's agent moved submissions on the basis that the grant comprised an easement. Taking the Appellant's case at its height, I shall treat the grant as an easement for the purposes of ascertaining whether the Appellant might avail of the exemption pursuant to section 564 TCA 1997.



8. Section 564 provides; *'In the computation under this Chapter of the gain accruing on the disposal by an individual of woodland, there shall be excluded.. consideration for the disposal of trees growing on the land, and ...'* [emphasis added]. The Respondent submitted that the grant of the easement was not a “*disposal ... of woodland*” and thus the exemption pursuant to section 564 TCA 1997 did not apply.
9. I am satisfied that there is no inherent ambiguity in the statutory wording used per section 564 and thus the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the interpretation of taxation statutes, based on a long line of authorities including *inter alia*; *Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64, *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449. Thus the words per section 564, are to be afforded their ordinary and natural meaning.
10. The exemption pursuant to section 564 applies to a “*disposal ... of woodland*”. The exemption in relation to the consideration attributable to trees is described as an exemption for the ‘*disposal of trees growing on the land*’. [emphasis added]. In my view, the use of the words “*disposal ... of woodland*” together with the reference to trees ‘*growing on the land*’ disposed of, requires the underlying land to be fully alienated in the disposal, if the section 564 exemption is to be availed of.
11. On the Appellant’s submission, the value of trees growing on the land should be excluded from chargeable gains arising in respect of the grant of the easement, in circumstances where the underlying land remains in the ownership of the landowner (the Appellant). I do not accept this submission. If it were correct, the exemption in respect of trees growing on the land could be claimed in relation to different easements granted over the same parcel of land, on successive or simultaneous occasions. This would be anomalous.
12. I determine that the grant of the easement in this case does not comprise a “*disposal ... of woodland*” for the purposes of section 564 TCA 1997. As a result, I determine that the exemption per section 564 TCA 1997 does not apply and the appropriate taxing provision is section 535(2) TCA 1997.



## **Conclusion**

13. I determine that there is no “*disposal ... of woodland*” for the purposes of section 564 TCA 1997 and that the exemption does not apply.
14. The parties agreed that the proceeds received by the Appellant represented a capital sum for the use or exploitation of an asset in accordance with section 535(2)(a)(iv) TCA 1997. I accept this submission and determine s. 535(2)(a)(iv) TCA 1997 to be the appropriate taxing provision.
15. This appeal is hereby determined in accordance with s.949AK TCA 1997.

**APPEAL COMMISSIONER**

**February 2017**

