



**10TACD2017**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to the question of the availability of an exemption in accordance with section 86 of the Capital Acquisitions Tax Act 2003 ('CATCA 2003') commonly referred to as '*dwelling-house exemption*'. The dwelling-house, the subject matter of the exemption claim, is located **[LOCATION REDACTED]**. This property was the family home of the Appellant, the place where she grew up and where she continued to reside at all relevant times (hereafter 'the family home').
2. The matter at issue in this appeal relates to whether the Appellant is entitled to claim the exemption or whether the Appellant was, at the date of the inheritance of the dwelling-house, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house in accordance with s.86(3)(b) CATCA 2003.
3. The Respondent, in disallowing the claim for exemption, raised a notice of amended assessment to Capital Acquisitions Tax on 22 April 2015 in the sum of **€[SUM REDACTED]** in respect of the period 1 September 2010 to 31 August 2011. The Appellant filed a notice of appeal in accordance with s.67 CATCA2003.



## Facts

4. The Appellant resided in the family home since childhood and cared for her parents during their illnesses. The Appellant's father ('the Testator') passed away on 27 October 2010. The grant of probate was extracted on 30 May 2011. Assets in the estate were distributed to the beneficiaries on 17 August 2011.
5. Pursuant to the Will of the Testator, dated [DATE REDACTED], all assets in the estate were divided in equal shares between the Appellant and her sibling. The Will did not contain any specific legacies. All property in the estate was bequeathed in accordance with clause 3 of the Will which provided;

*'I GIVE DEVISE AND BEQUEATH all of my property of every nature, description and kind, wheresoever situate, to my son [NAME REDACTED] and daughter [NAME REDACTED] in equal shares for their own use and benefit absolutely.'*

6. Where all of the estate of a Testator is bequeathed to one beneficiary or a number of beneficiaries they are generally referred to as universal legatees however, the bequest remains a residuary bequest because the debts and expenses of the estate must be discharged prior to payment out to the beneficiaries, of the assets in the estate.
7. The parties submitted that clause 3 of the Testator's Will was in the nature of a residue clause and that the properties devised therein comprised residuary legacies and I am satisfied that this is correct.
8. In February 2011, the Appellant and her sibling executed a deed of family arrangement, the execution of which determined that the Appellant would receive a 100% (as opposed to 50%) interest in the family home and that her sibling would receive a 100% (as opposed to 50%) interest in a business and business premises in [LOCATION REDACTED]. Thus the Respondent accepted that the Appellant inherited an undivided interest in the family home and that her claim for exemption related to the entire undivided interest therein. The Appellant also inherited from her father, a share in four other residential properties.



## Legislation

Section 52 of the Finance Act 2016 enacted changes to section 86 CATCA2003 however these enactments post-date the administration of the Testator's estate and the matters at issue in this appeal. The relevant legislation for the purposes of this appeal is as follows;

### Section 2 CATCA 2003 - General interpretation

**"date of the inheritance"** means—

*(a) in the case where the successor or any person in right of the successor or on that successor's behalf becomes entitled in possession to the benefit on the happening of any such event as is referred to in section 3(2), the date of the event,*

*(b) in the case of a gift which becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponent, the date which would have been the date of the gift if the entitlement were a gift, and*

*(c) in any other case, the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit,*

*and a reference to the time when an inheritance is taken is construed as a reference to the date of the inheritance;*

### Section 86 CATCA 2003 - Exemption relating to certain dwellings

*(1) In this section—*

**"dwelling house"** means—

*(a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and*

*(b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;*



***“relevant period”***, in relation to a dwelling-house comprised in a gift or inheritance, means the period of 6 years commencing on the date of the gift or the date of the inheritance.

...

(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a done or successor who –

(a) has continuously occupied as that done or successor’s only or main residence –

(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or

(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance,

(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and

(c) continues to occupy that dwelling-house as that done or successor’s only or main residence throughout the relevant period

is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7),

...

etc.

#### Section 5 of the Interpretation Act 2005 – Construing ambiguous or obscure provisions, etc.

.—(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)—

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of—



*(i) in the case of an Act to which paragraph (a) of the definition of “Act” in section 2 (1) relates, the Oireachtas, or*

*(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,*

*the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole*

*(2) In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal or other sanction)—*

*(a) that is obscure or ambiguous, or*

*(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,*

*the provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment.*

## **Submissions**

9. The Respondent accepted that the family home was a ‘dwelling-house’ within the meaning of s.86(1) CATCA2003, that the Appellant had resided in the family home as her only or main residence for three years prior to the date of death of her father on 27 October 2010 and that the Appellant continued to occupy the house as her only or main residence since that date. At the time of hearing of this appeal, the Appellant had occupied the family home as her only or main residence throughout the ‘*relevant period*’ within the meaning of s.86 CATCA2003, being a period of 6 years commencing on the date of the inheritance.

### *Date of the inheritance*

10. The parties agreed that the applicable sub-clause in respect of the date of the inheritance as contained per section 2 CATCA 2003 was sub-clause (c) which provides that the date of the inheritance means ‘*the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor’s*



*behalf, to become beneficially entitled in possession to the benefit'. Both parties submitted that the date of the inheritance in respect of all properties inherited by the Appellant, was 27 October 2010, the date of death of the Testator.*

*Meaning of 'at the date of the inheritance' per s.86(3)(b) CATCA2003*

11. The Appellant submitted that the expression '*at the date of the inheritance*' was not ambiguous and that a literal interpretation of the expression would lead to a determination that on the date of death of the Testator, the Appellant was not beneficially entitled to any interest in any other property and that s.86(3)(b) was thereby not invoked.
12. In the alternative, the Appellant submitted that the expression '*at the date of the inheritance*' per s.86(3)(b) was ambiguous. Counsel for the Appellant submitted that ambiguity arose in relation to the words '*at the date*' on the basis that it was not clear whether the words related to the start of the day, the time of death or the end of the day.
13. The Respondent rejected the contention that the expression '*at the date of the inheritance*' per s.86(3)(b) was ambiguous. The Respondent contended that the words '*at the date of the inheritance*' per s.86(3)(b) referred to and encompassed the 24-hour period of 27 October 2010.

*Properties inherited at the same time*

14. The Respondent contended that as all of the properties formed part of the residue of the estate, they were inherited by the Appellant at the same time. The Respondent contended that it was not possible for the Appellant to submit that she received the dwelling-house at one time and the other properties at another time as all of the properties were received on the death of the Testator and not at different times. Counsel for the Respondent contended that '*everything happened at once*' and that the Appellant was '*either entitled to the dwelling-house and everything else or she was entitled to nothing at all*'.



15. The Appellant submitted that '*at the same time*' was not the appropriate legal test to be applied as the expression '*at the same time*' did not appear in section 86 CATCA2003.

*Statutory Interpretation*

16. The Appellant, while contending for a literal interpretation in the first instance, submitted that in the event the wording of s.86(3)(b) was determined to be ambiguous, that s. 5 of the Interpretation Act would apply and thereby, s.86 CATCA2003 should be afforded a construction reflecting the plain intention of the Oireachtas. The Appellant submitted that the intention of the Oireachtas was to preserve an exemption in relation to the family home, irrespective of whether a beneficiary inherited other properties from the same Testator/Testatrix.
17. The Respondent submitted that the purpose of the exemption was to try and ensure that if a taxpayer inherited a family home in which they were living, the taxpayer would not have to sell the property to pay the CAT however, the Respondent stated that the section was never intended to provide a CAT exemption where the taxpayer inherited other assets sufficient to discharge the CAT arising in respect of the family home.

*Meaning of 'interest' per section 86(3)(b) CATCA2003*

18. Section 86(3)(b) will render a claimant ineligible for the exemption where, at the date of the inheritance, the claimant was '*beneficially entitled to .... any interest in any other dwelling-house*'. The Respondent contended that the word '*interest*' per s.86(3)(b) included a beneficiary's interest in the due administration of an estate, and that the Appellant was thus ineligible for the exemption on this basis. The Appellant refuted this contention.



## Analysis and findings

### *Date of the inheritance*

19. The applicable subparagraph in relation to the meaning of '*date of the inheritance*' per s.2 CATCA2003 is subparagraph (c) which provides; "*date of the inheritance*" means - .... *the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit.*' While both parties submitted that the date of the inheritance in respect of all properties inherited by the Appellant was 27 October 2010, a submission I fully accept, it is important to make some additional observations.
20. The definition of '*date of the inheritance*' connects the event of a successor becoming beneficially entitled in possession, to '*the latest death which had to occur*' in order for that event to take place. The provision does not import that the date of death and the date a successor becomes beneficially entitled in possession to a benefit, are the same event.
21. Furthermore, the date of the inheritance is the latest death which had to occur, for the successor to become beneficially entitled in possession. The provision does not provide that the date of the inheritance and the date upon which a successor becomes beneficially entitled in possession are matters which take place on the same date.
22. In general, under subparagraph (c) of the definition, the date of the inheritance will be the date of death of the Testator or Testatrix. In this case, the date of the inheritance in respect of all residuary legacies, including the family home, is the date of death of the Testator i.e. 27 October 2010.

### *Meaning of 'at the date of the inheritance' per s.86(3)(b) CATCA2003.*

23. The Appellant's submission was that a plain, literal interpretation of the expression '*at the date of the inheritance*' would lead to the conclusion that on the date of death of the Testator, the Appellant did not own any interest in any other property and that the Appellant would be entitled to avail of the exemption per section 86 CATCA2003.





24. In the alternative, the Appellant submitted that the expression '*at the date of the inheritance*' per s.86(3)(b) was ambiguous. Counsel for the Appellant submitted that the ambiguity arose in relation to the words '*at the date*' on the basis that it was not clear whether the words related to the start of the day, the time of death or the end of the day. The Appellant stated that at 00.01am on the morning of 27 October 2010, the Testator was living and the Appellant had no interest in any property. The Testator passed away at approximately 23.30pm on 27 October 2010. Counsel for the Appellant submitted that, as the Testator did not pass away until late evening on 27 October 2010, the Testator remained the owner of the property for the predominant part of that day.
25. The Respondent rejected the contention that the words '*at the date of the inheritance*' per s.86(3)(b) were ambiguous. The Respondent submitted that the section did not seek to refer to the time of death but referred to the date of the inheritance. The Respondent contended that the words '*at the date*' of the inheritance per s.86(3)(b) referred to and encompassed the 24-hour period of 27 October 2010.
26. I am satisfied that there is no inherent ambiguity in the expression '*at the date of the inheritance*' and thus a literal interpretation is the appropriate means by which to proceed. As a result, the words are to be afforded their ordinary and natural meaning. All parties are agreed that the date of the inheritance in this case is 27 October 2010. I determine that the expression '*at the date of the inheritance*' per s.86(3)(b) means, at any time on the date of the inheritance i.e. at any time during the 24-hour period of 27 October 2010.

*Properties inherited at the same time*

27. The Respondent contended that all of the properties transferred on death formed part of the residue of the estate and that all were inherited by the Appellant at the same time and not at different times. This submission is correct in that the date of inheritance in respect of all of the properties is 27 October 2010.
28. The Respondent contended that as the Appellant became beneficially entitled to all of the properties at the same time and on the same date, the Appellant did not satisfy the conditions necessary to claim the dwelling-house exemption.



29. Counsel for the Respondent stated that ‘everything happened at once’ and that the Appellant was either entitled to the dwelling-house and everything else or was entitled to nothing at all. The Respondent contended that it was not possible for the Appellant to submit that she received the dwelling-house at one time and the other properties at another time.
30. In reply, the Appellant submitted that ‘*at the same time*’ was not the appropriate legal test to be applied as the expression ‘*at the same time*’ did not appear in section 86 CATCA2003.
31. Essentially, the Respondent questioned whether, in circumstances where the family home plus an interest in four other properties was inherited by the Appellant on the same date, it could be correct to suggest that the Appellant would be entitled to the exemption on the basis that she was not beneficially entitled to ‘*any interest in any other dwelling-house*’ on that date. This question merits consideration however, as regards the specifics of the legislation, it is clear that the Appellant is correct. The expression ‘*at the same time*’ does not appear in s.86(3)(b). The applicable legal test is that contained per s.86(3)(b) namely, whether at the date of the inheritance the Appellant was beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house.

#### *Statutory Interpretation*

32. To address the matter of statutory interpretation, I am satisfied that there is no inherent ambiguity in the statutory wording used in subsections (1) or (3) of section 86 CATCA2003 and, as a result, the words contained therein shall be afforded their ordinary and natural meaning. The interpretative approach to be applied is a literal one taking into account the jurisprudence in relation to 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 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.



### *Case Law*

33. The date of the inheritance in relation to all properties inherited by the Appellant was the date of death of the Testator i.e. 27 October 2010. As at this date, administration of the estate was not complete, nor could it have been. The net estate post deduction of debts and liabilities was ascertained on 29 March 2011. The grant of probate was extracted on 30 May 2011. Assets in the estate were distributed on 17 August 2011.
34. In a testate administration, the position is that on death, both the legal and beneficial interests in the estate vest in the executor who is charged with collecting in all assets, paying all expenses and debts and then distributing the net estate to the beneficiaries. Wylie, *Land Law*, 5<sup>th</sup> ed. para [16.01] describes the matter thus: *'.... transmission of the ownership of property from the deceased owner to the succeeding owner takes place in two stages. The property devolves first by operation of law to persons known as personal representatives, namely executors or administrators, and then the beneficial ownership is transferred to the appropriate successors, usually by act of the personal representatives.'*
35. In an estate there will be funeral expenses, legal costs and sometimes, liabilities. Property in the estate may need to be sold to discharge these expenses and liabilities and as a result, estate property may become unavailable to the beneficiaries due to the obligation to discharge these costs and expenses in advance of the payment out of distributions to successors.
36. The personal representatives of the deceased hold the estate as trustees for the persons in law entitled thereto in accordance with s.10 of the Succession Act 1965.
37. Section 10 of the Succession Act 1965 provides;
- (1) *The real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve on and become vested in his personal representatives.*
  - (2) *The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.*
  - (3) *The personal representatives shall be the representatives of the deceased in regard to his real and personal estate and shall hold the estate as trustees for the persons by law entitled thereto.*



(4) .... etc

38. The assets inherited in this estate comprised residuary legacies in the estate. This type of legacy is to be distinguished from a specific legacy. A specific legacy is one where the Testator makes a devise of a specific piece of real property (usually described in the Will as located at an identifiable place or address). A specific legacy must be paid by the personal representative of the estate in priority to general legacies (a legacy which is to be met from the testator's overall estate) and cannot be used to satisfy the Testator's debts until residuary property has been exhausted. However, in this estate, there were no specific legacies. All property devolved through the residue of the estate. The net estate was not known at the date of death of the Testator on 27 October 2010 as it was not ascertained until 29 March 2011.

39. To further the analysis, one must consider the nature of the interest of a residuary legatee, pending administration of the estate. The leading authority on the matter is the Supreme Court case of *Gleeson v Feehan (No. 2.)* [1997] 1 ILRM 522 which is authority for the proposition that until such time as the extent of the residuary estate of a deceased person has been ascertained and the executor is in a position to either vest the proceeds of sale of properties comprised in the residue in the residuary legatees or, where appropriate, to vest individual items of property *in specie* in an individual residuary legatee, it would be contrary to elementary legal principles to treat the persons entitled to the residuary estate of a deceased person as being the owners in equity of specific items forming part of that residue.

40. At page 14 of the report, Keane J. (as he then was) stated:

*'It is obvious that, using the word in a loose and imprecise sense, the next-of-kin of the intestate owner of property have at least an 'interest' in ensuring that the administration of his property is carried out in accordance with law by the administrator. They have indeed more than a mere 'interest' of that nature: they have a right, in the nature of a chose in action, to payment to them of the balance of the estate after the debts have been discharge, a right which can be enforced against the personal representative. It is also not in dispute that, whatever the legal nature may be of the estate vested in an executor or an administrator, he does not hold the property for his own benefit: to that extent, at least, he is properly regarded as a trustee who must perform the duties of his office, not in*



*his own interest, but in the interests of those who are ultimately entitled to the deceased's property, whether as beneficiaries or as creditors.*

*It is, however, clearly contrary to elementary legal principles to treat the persons entitled to the residuary estate of a deceased person as being the owners in equity of specific items forming part of that residue, until such time as the extent of the balance has been ascertained and the executor is in a position either to vest the proceeds of sale of the property comprised in the residue in the residuary legatees or, where appropriate, to vest individual property in specie in an individual residuary legatee. Precisely the same considerations apply to the rights of a next-of-kin in relation to the estate of a person who dies intestate. Until such time as the extent of the residue after payment of debts available to the beneficiaries is ascertained, there is no basis in law for treating them as entitled in equity to any specific item forming part of the estate.'*

41. The Supreme Court case of *O'Hagan v Grogan* [2012] IESC 8, a case which involved, *inter alia*, the interpretation and application of various provisions of the Statute of Limitations in the context of a claim for adverse possession in the administration of an intestate estate, also considered the role of an administrator. Macken J. at page 418 stated;

*'.... The grant of Letters of Administration is made with a view to the proper administration of the intestate estate. Under the provisions of s.10 of the Act of 1965 the whole of the intestate estate vests in the personal representative, who nevertheless does not hold the estate on his own behalf, but (under s.10(3)) as a trustee for the persons in law who are entitled to it, and he must act accordingly. Those persons have an immediate beneficial equitable interest in the estate by way of trust, which is, nevertheless, subject to rights of the administrator, who has certain powers, including, for example, those for the purposes of disposition. The power to deal with the property of an intestate dates only from the date of grant, however, (as opposed to the position of an executor of a person who dies testate where the property vests on death).*

*An administrator, acting in accordance with the provisions of the Act of 1965, is charged with collecting in all assets, paying all relevant debts, and on completion of the administration, vesting the assets in the beneficiaries entitled on intestacy.'* [emphasis added]



42. While Keane J. in *Gleeson v Feehan (No. 2.)* was of the view that residuary legatees could not be considered the owners in equity of specific items forming part of the residue, until such time as the net estate was ascertained, the view expressed in *O'Hagan v Grogan* was that beneficiaries have an immediate beneficial equitable interest in the estate '*by way of trust*', which is, '*subject to rights of the administrator who has certain powers...*'. The dicta of Macken J. goes on to state that the assets will be vested in the beneficiaries "*on completion of the administration*".
43. The trust referred to in *O'Hagan v Grogan* is a trust per s.10 of the Succession Act 1965, i.e. where the personal representative is vested with the whole of the estate and where the personal representative holds the estate as trustee for the persons in law entitled thereto. The equitable interest is stated to be '*by way of trust*' and '*subject to*' the rights of the administrator. The rights of the administrator if properly exercised, will result in due administration of the estate for the benefit of the successors. It follows that a successor could not be assured of becoming vested with any item of property in the estate until such time as the monies and assets of the estate have been collected, the expenses, debts and creditors have been identified and the net estate has been ascertained.
44. Wylie on Irish Land Law, 5<sup>th</sup> edition, at paragraph [17.14] describes the matter thus;
- 'Until the personal representatives have completed the administration of the estate, the deceased's intestate successors have no interest (legal or equitable) in the estate vested in them. They have, at most, 'inchoate' rights, such as the right to insist upon a proper administration by the personal representatives. The trust imposed on the personal representatives is designed to protect their rights, so as to ensure that the net estate resulting from due administration is held available for creditors entitled to be paid out of it and successors entitled to its distribution. Until the net estate is arrived at the entire interest in the property remains fully vested in the personal representatives and it is a fallacy to regard some equitable or beneficial interest as being vested in the deceased's successors.'*
45. The case of *Gleeson v Feehan (No. 2)* is authority for the proposition that that until the residue of an estate is ascertained, the residuary legatees are not to be treated as the owners in equity of specific items forming part of the residue. Thus pending ascertainment of the net estate, the beneficial interest in an item of residuary



property, does not vest in a successor however much a successor may anticipate becoming the owner in law of that item of property. The case of *O'Hagan v Grogan*, while it differs in relation to its facts in that it concerned an intestate estate, is *at idem* with this principle.

46. Based on the Supreme Court authorities of *Gleeson v Feehan (No. 2)* and *O'Hagan v Grogan*, the position of the Appellant as residuary legatee of the estate was that until the net estate was ascertained on 29 March 2011, the personal representatives remained seized of the legal and beneficial interest in all properties in the estate in accordance with section 10 of the Succession Act 1965. Therefore, on the date of inheritance (27 October 2010), the Appellant was not beneficially entitled to any of the properties devised pursuant to the terms of clause 3 of the Will of the Testator and therefore, was not on the date of the inheritance '*beneficially entitled to ... any interest in any other dwelling-house*' in accordance with s.86(3)(b) CATCA2003.
47. The Respondent claimed that even if this was so, the Appellant was disqualified from claiming the relief on the basis that she had an interest in the due administration of the estate which comprised an '*interest*' for the purposes of s.86(3)(b) CATCA 2003.
48. While a successor has an interest in the due administration of an estate by the personal representatives, the relevant question is whether this is an '*interest in any other dwelling-house*' for the purposes of s.86 CATCA2003. It is important to note that an interest in due administration of an estate does not guarantee that a successor will become the owner or interest holder of any item of property forming part of the estate, even if the estate is properly and lawfully administered. As a result, it cannot be said that such an interest is an interest in land nor an '*interest in any other dwelling-house*' for the purposes of s.86 CATCA2003. Wylie on Irish Land Law, 5<sup>th</sup> edition, at paragraph [17.14] cited above, describes this interest as '*inchoate rights*'.
49. As the family home was a residuary legacy, the Appellant cannot be said to have been entitled to a beneficial interest in it until, at the earliest, the net estate was ascertained, on 29 March 2011. However, while the date of inheritance in respect of all properties was 27 October 2010 and while the Appellant did not become beneficially entitled to all properties until, at the earliest, 29 March 2011, the facts in relation to the family home are distinct (as compared with the share inherited by the Appellant in the other properties) because the Appellant was *in occupation* of the





family home at the date of the inheritance. It is necessary then to consider the implications which arise in the context of s.86 CATCA2003 where property is occupied by a claimant.

*The dwelling-house, the subject of the exemption claim*

50. Even though all of the properties inherited were residuary legacies, it is necessary for CAT purposes to contemplate a distinction between the family home, the subject matter of the exemption claim and ‘*any other dwelling-house*’ per s.86(3)(b). This distinction arises on foot of the statutory wording contained in section 86. Subsection (3) provides;

*(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a donee or successor who –*

*(a) has continuously occupied as that donee or successor’s only or main residence –*

*i. that dwelling-house throughout the period of 3 years immediately preceding ... the date of the inheritance, or*

*ii. where .....,*

*(b) is not, ... at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and*

*(c) continues to occupy that dwelling-house as that donee or successor’s only or main residence throughout the relevant period*

*is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7),*

*...*

*[emphasis added]*

51. Section 86 provides that ‘*relevant period*’ means ‘*the period of 6 years commencing on ... the date of the inheritance*’.





52. The exemption applies to a dwelling-house which has been occupied by a successor for 3 years immediately preceding the date of the inheritance, which is occupied by the successor on the date of the inheritance and which is then occupied by the successor for the 6-year relevant period.
53. If the statutory requirements of section 86 occupation have been met by a successor at the date of the inheritance, then the successor is *prima facie* eligible in respect of the exemption. However, as per subsection (3)(b), the successor will become ineligible if, on the date of the inheritance, the successor is '*beneficially entitled to any other dwelling-house or any interest in any other dwelling-house*'.
54. It is important to note that while the words '*beneficially entitled*' are used in relation to the s.86(3)(b) requirement, they are absent as regards the requirements attaching to the dwelling-house, the subject of the exemption claim.
55. The statutory requirements attaching to a dwelling-house, the subject of a claim are distinct from the statutory requirements attaching to a dwelling-house(s) the subject of s.86(3)(b). This distinction arises as a result of the statutory wording contained in section 86. It is the matter of occupation of a property by a successor on the date of inheritance which *prima facie* marks that property out as the subject matter of a potential section 86 exemption claim, subject to, that is, satisfaction of all other s.86 conditions.
56. Section 86 does not require a successor to be beneficially entitled to the dwelling-house, the subject matter of the claim, on the date of the inheritance. It requires that that the dwelling-house, the subject of the claim, has been '*continuously occupied*' by the successor for 3 years preceding the date of the inheritance as the successor's only or main residence and that the dwelling-house is occupied by the successor on the date of the inheritance (the date of the inheritance forming part of the 6-year relevant period).
57. Once these requirements are met, the dwelling-house, the subject of the claim, is *prima facie* exempt subject to satisfaction of all other s.86 conditions. In terms of those conditions, this appeal is focused on s.86(3)(b). Subsection s.86(3)(b) asks whether, on the date of the inheritance of the family home on 27 October 2010, the Appellant was '*beneficially entitled to... any interest in any other dwelling-house*'. Based on the Supreme Court authorities of *Gleeson v Feehan (No. 2)* and *O'Hagan v*



*Grogan*, the Appellant became beneficially entitled to the other properties together with the family home, at the earliest on 29 March 2011, the date of ascertainment of the net estate after deduction of debts and liabilities.

58. In this appeal the Respondent questioned how, in circumstances where the family home plus a share in four other properties was inherited by the Appellant on 27 October 2010, it could be correct to suggest that the Appellant was not beneficially entitled to '*any interest in any other dwelling-house*' on that date.
59. It is correct because the Appellant was not beneficially entitled to the properties on 27 October 2010 (the date of the inheritance). The Appellant became beneficially entitled to all properties (including the family home), at the earliest, on 29 March 2011. The criteria which apply in relation to the dwelling-house the subject of the claim, relate to occupation of the property by the claimant over specified periods. Section 86 does not require that on the date of the inheritance a potential claimant must be beneficially entitled to the dwelling-house the subject of the exemption claim. If it did, the family home would not meet the qualification criteria for exemption in the first place.
60. The date of the inheritance of all of the properties inherited in this case preceded the date upon which the Appellant became beneficially entitled to all of those properties and thus the date of the inheritance of the family home did not coincide with the date upon which the Appellant became beneficially entitled to her share in the four other properties inherited.
61. As a result, on 27 October 2010, the date of the inheritance, the exemption claim in relation to the family home was *prima facie* available to the Appellant, the Appellant having satisfied the criteria as to occupation on the date of the inheritance and for three years preceding. Furthermore, the Appellant was not disqualified from claiming the exemption on foot of s.86(3)(b) because the Appellant was not, on 27 October 2010, '*beneficially entitled .... to any interest in any other dwelling-house*' in accordance with s. 86(3)(b) CATCA2003. The Appellant did not become beneficially entitled to these other properties until 29 March 2011 at the earliest, some five months after the date of the inheritance.



## **Conclusion**

62. For these reasons and for all other reasons set out above, I determine that the Appellant has satisfied the conditions necessary to avail of the section 86 exemption in respect of the family home and that she is not disqualified from claiming the exemption on the basis of s.86(3)(b) CATCA2003.
63. I determine that the assessment raised on 22 Apr 2015 disallowing the exemption pursuant to section 86 CATCA2003, in respect of the period 1 September 2010 to 31 August 2011, shall be reduced to zero. This appeal is hereby determined in accordance with section 949AK TCA 1997.

**APPEAL COMMISSIONER**

**August 2017**

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.**

