



13TACD2017

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the imposition of Capital Acquisitions Tax ('CAT') in respect of the gifted element of a property at **[ADDRESS REDACTED]** Dublin, (hereafter 'the property').
2. On **[DATE REDACTED]** June 2014, the vendors (who were the parents of the wife of the Appellant) transferred a property to their daughter and their son-in-law, the Appellant. The property, valued at €350,000 (for which consideration of €275,000 was paid by the Appellant and his wife) included a gift element, valued at €75,000.
3. On the basis that the property was transferred in equal shares to the purchasers (the Appellant and his wife), the Respondent assessed the Appellant to CAT in relation to half of the gifted amount of the property, namely, €37,500.



4. The Respondent raised an assessment to CAT on **[DATE REDACTED]** May 2015. Post adjustment of the gross taxable amount to account for the group (c) threshold and the annual small gift exemption, the liability to CAT totalled €5,420. The Appellant duly appealed.

Facts

5. The contract for sale in respect of the property was executed on **[DATE REDACTED]** May 2014 by the vendors (the parents of the wife of the Appellant) and the purchasers (the Appellant and his wife) in respect of '*All that and those the dwelling house and premises known as **[ADDRESS REDACTED]** being the property more particularly comprised in and described by folio **[REDACTED]** of the register of Freeholders County Dublin.*' The deed of transfer, which acknowledged receipt of the purchase price of €275,000 in respect of the property, was executed on **[DATE REDACTED]** June 2014 by the vendors and the purchasers and completion of the transaction was effected on this date. The property was registered with the Land Registry on **[DATE REDACTED]** June 2014 in the names of the Appellant and his wife, as full owners.
6. On **[DATE REDACTED]** September 2014 the Appellant and his wife executed a transfer of the property unto themselves, vesting the property in themselves in the unequal shares of 39% (in favour of the Appellant) and 61% (in favour of the Appellant's wife) respectively.
7. On **[DATE REDACTED]** October 2014 the previous registration dated **[DATE REDACTED]** June 2014 was cancelled and the property was re-registered in unequal shares, namely, a 39% interest in favour of in the Appellant and a 61% in the name of his wife.

Submissions

8. The Respondent contended that pursuant to the contract and conveyance of the property the Appellant became the full beneficial and legal owner of a 50% share in the property in circumstances where he received a gift of part of that 50% share, to the value of €37,500 which, the Respondent submitted, was evidenced by the registration of the property on **[DATE REDACTED]** June 2014 in the names of the Appellant and his wife as full owners thereof. The Respondent submitted that the



Appellant was liable for gift tax in respect of this sum pursuant to section 5 CATCA2003 as per the assessment raised on **[DATE REDACTED]** May 2015.

9. The Appellant contended that he, his wife and his wife's parents, at all times, intended that his wife would be the sole recipient of the gift element of the property and that they had understood, from their communications with the local tax office, that the gift element of €75,000 would be covered by the group (a) threshold between the Appellant's wife and her parents. The Appellant furnished a note signed by his wife and her parents dated **[DATE REDACTED]** April 2014, stating that they agreed to gift their daughter the €75,000 gift element in the property.

Legislation

Section 5 CATCA2003 - Gift deemed to be taken.

(1) For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.

(2) A gift is deemed—

(a) to consist of the whole or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which the benefit is charged or secured or on which the donee is entitled to have it charged or secured, ...'

Section 2 CATCA2003 – General Interpretation

“date of the gift” means the date of the happening of the event on which the donee, or any person in right of the donee or on that donee's behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift



Analysis and findings

10. In accordance with s.2 CATCA2003, the date of a gift is the date upon which a taxpayer becomes beneficially entitled in possession to a benefit.
11. The Respondent contended that on the date of registration of his interest as co-owner of the property on **[DATE REDACTED]** June 2014, there was no doubt but that the Appellant retained a full legal and beneficial interest in a 50% share in the property in circumstances where he received a gift of part of that 50% share, to the value of €37,500. The Respondent submitted that the Appellant was liable to gift tax in respect of this sum pursuant to section 5 CATCA2003.
12. The Appellant contended that he, his wife and his wife's parents, at all times, intended that his wife would be the sole recipient of the gift element of the property and that they had understood from their communications with the local tax office that the gift element of €75,000 would be covered by the group (a) threshold between the Appellant's wife and her parents.
13. There is no dispute between the parties in relation to the existence of the deeds, their content, the fact of their execution or the dates of execution. Rather, the Appellant's submission turns on what was intended by the parties to the transaction but was not reflected in the relevant deeds.
14. At law, the entire beneficial interest passes to the purchaser on the execution of an enforceable contract in accordance with section 52 of the Land and Conveyancing Law Reform Act 2009. In this case, the contract was executed on **[DATE REDACTED]** May 2014 and the deed of conveyance executed on **[DATE REDACTED]** June 2014 whereupon completion of the transaction was effected. The property was registered in the Land Registry in the names of the Appellant and his wife as full owners on **[DATE REDACTED]** June 2014.
15. While the Appellant submitted that the parties to the transaction intended the transaction to take place in a more tax efficient manner, the tax consequences arise from the deeds and their content as executed. The Appellant contended that there



was an error in the registration on **[DATE REDACTED]** June 2014 in that the registration did not reflect the actual ownership proportions held by himself and his wife in respect of the property. In fact, the registration mirrored precisely the contract and conveyance executed on **[DATE REDACTED]** May 2014 and **[DATE REDACTED]** June 2014 respectively.

16. The information relayed by the tax office (that a gift of €75,000 from parent to child would be covered by the group (a) threshold) is correct on its face. However, the gift element of the transaction was not specifically dealt with in the transfer of the property to the Appellant and his wife.
17. While the Appellant furnished a note signed by his wife and her parents dated **[DATE REDACTED]** April 2014, stating that they agreed to gift their daughter the €75,000 gift element in the property, this agreement was not reflected in the contract and conveyance which transferred the full interest in the property to the Appellant and his wife in equal shares. The gift element of the property passed pursuant to these deeds and in the same terms *i.e.* in equal shares. The effect of the execution of these deeds was that the Appellant became beneficially entitled to a gift element in the property, in the sum of €37,500 upon which CAT became payable in accordance with section 5 CATCA2003.
18. While the subsequent cancellation and re-registration of the property on **[DATE REDACTED]** October 2014 (pursuant to the deed executed as between the parties on **[DATE REDACTED]** September 2014) altered the respective shares in which the parties now hold the property, it does not invalidate the CAT consequences which arose on foot of the contract and conveyance executed in this case on **[DATE REDACTED]** May 2014 and **[DATE REDACTED]** June 2014 respectively.

Conclusion

19. I determine that the Appellant is liable to gift tax in accordance with section 5 CATCA2003 in relation to a gift from the vendors of a part-interest in the property, valued at €37,500.





20. Accordingly, the assessment to CAT in the sum of €5,420, raised on **[DATE REDACTED]** May 2015 shall stand. This appeal is hereby determined in accordance with section 949AK TCA 1997.

APPEAL COMMISSIONER

September 2017

