



**14TACD2017**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

### **DETERMINATION**

#### **Introduction**

1. This is an appeal against an assessment to Capital Acquisitions Tax ('CAT') raised on **[DATE REDACTED]** March 2016, originally €370,684 and subsequently reduced to €365,473, in respect of the period **[DATE REDACTED]** May 2011 to **[DATE REDACTED]** November 2011. The Appellant filed a Notice of Appeal on **[DATE REDACTED]** April 2016.
2. The appeal concerns the question of whether the Appellant is entitled to claim a credit pursuant to section 104 of the Capital Acquisitions Tax Act 2003 ('CATCA 2003') for capital gains tax on the disposal of the land as against the additional capital acquisitions tax arising from the clawback of the agricultural relief.

#### **Facts**

3. The Appellant inherited agricultural property valued at €1.7 million on the death of his uncle ('the disponent') in 2011 to which he was entitled to claim agricultural relief pursuant to section 89 CATCA 2003. The CAT payable in respect of the inheritance after agricultural relief amounted to €34,141.00 which was duly paid. In April 2015,



the Appellant sold a portion of the agricultural property for a sum of approximately €7 million. A clawback of the agricultural relief was applied in accordance with s.89(4) CATCA 2003 on the basis that part of the land comprised in the inheritance in 2011 was disposed of within the period of 6 years commencing on the date of the inheritance. There was no dispute between the parties in relation to the facts in this appeal.

4. The Appellant incurred capital gains tax ('CGT') in respect of the disposal of the land and the Appellant claimed a credit pursuant to section 104 CATCA 2003 for the capital gains tax on the disposal of the land, against the additional capital acquisitions tax arising from the clawback of the agricultural relief. The Respondent disallowed the credit and raised an assessment and the Appellant duly appealed.

### **Legislation**

#### Section 89 CATCA2003 - Provisions relating to agricultural property

*(1) In this section—*

*'agricultural property' means—*

*(a) agricultural land, pasture and woodland situate [in a Member State] and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property, and*

*(b) a payment entitlement (within the meaning of [Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 (OJ No L347, 20.12.2013, p 608)]*

*'agricultural value' means the market value of agricultural property reduced by 90 per cent of that value;*

*'farmer', in relation to a donee or successor, means an individual in respect of whom not less than 80 per cent of the market value of the property to which the individual is beneficially entitled in possession is represented by the market value of property in a Member State which consists of agricultural property, and, for the purposes of this definition—*



...

...

(4)

(a) Where—

*(i) all or any part of the agricultural property (other than crops, trees or underwood) comprised in a gift or inheritance is disposed of or compulsorily acquired within the period of 6 years [commencing on] the date of the gift or inheritance, and*

*(ii) the proceeds from such disposal or compulsory acquisition are not fully expended in acquiring other agricultural property within a year of the disposal or within 6 years of the compulsory acquisition,*

*then, except where the donee or successor dies before the property is disposed of or compulsorily acquired, all or, as the case may be, part of the agricultural property shall, for the purposes of subsection (2) and in accordance with paragraph (aa), be treated as property comprised in the gift or inheritance which is not agricultural property, and the taxable value of the gift or inheritance shall be determined accordingly (without regard to whether the donee or successor has ceased to be a farmer by virtue of the disposal or compulsory acquisition) and tax shall be payable accordingly.*

(aa) For the purposes of paragraph (a)—

*(i) the market value of agricultural property which is treated under paragraph (a) as not being agricultural property is determined by the following formula—*

$$V1 \times N/V2$$

where—

*V1 is the market value of all of the agricultural property on the valuation date without regard to paragraph (a),*

*V2 is the market value of that agricultural property immediately before the disposal or compulsory acquisition of all or, as the case may be, a part thereof, and*



*N is the amount of proceeds from the disposal or compulsory acquisition of all the agricultural property or, as the case may be, a part thereof, that was not expended in acquiring other agricultural property, and*

*(ii) the proceeds from a disposal include an amount equal to the market value of the consideration (not being cash) received for the disposal.]*

*(b) If an arrangement is made, in the administration of property subject to a disposition, for the appropriation of property in or towards the satisfaction of a benefit under the disposition, such arrangement is deemed not to be a [disposal] or a compulsory acquisition for the purposes of paragraph (a).*

*(4A) Where the proceeds referred to in subparagraph (ii) of subsection (4)(a) are expended in acquiring agricultural property which has been transferred by the donee or successor to his or her [spouse or civil partner], such property shall not be treated as other agricultural property for the purposes of that subparagraph.*

*(4B) Where a donee, successor or lessee ceases to qualify as a farmer under subsection (1) within the period of 6 years commencing on the valuation date of the gift or inheritance, all or, as the case may be, part of the agricultural property shall for the purposes of subsection (2), otherwise than on the death of the donee, successor or lessee, be treated as property comprised in the gift or inheritance that is not agricultural property, and the taxable value of the gift or inheritance shall be determined accordingly and tax shall be payable accordingly.*

*... etc..*

#### Section 104 CATCA2003 - Allowance for capital gains tax on the same event

*(1) Where gift tax or inheritance tax is charged in respect of property on an event happening on or after the date of the passing of this Act, and the same event constitutes for capital gains tax purposes a disposal of an asset (being the same property or any part of the same property), the capital gains tax, if any, chargeable on the disposal is not deducted in ascertaining the taxable value for the purposes of the gift tax or inheritance tax but, in so far as it has been paid, is deducted from the net gift tax or inheritance tax as a credit against the same; but, in relation to each asset, or to a part of each asset, so disposed of, the amount deducted is the lesser of—*

*(a) an amount equal to the amount of the capital gains tax attributable to such asset, or to the part of such asset, or*



*(b) an amount equal to the amount of the gift tax or inheritance tax attributable to the property which is that asset, or that part of that asset.*

*(2) For the purposes of any computation of the amount of capital gains tax to be deducted under this section, any necessary apportionments are made of any reliefs or expenditure and the method of apportionment adopted is such method as appears to the Commissioners, or on appeal to the Appeal Commissioners, to be just and reasonable.*

*(3) The deduction by virtue of subsection (1) of capital gains tax chargeable on the disposal of an asset against gift tax or inheritance tax shall cease to apply to the extent that the asset is disposed of within 2 years commencing on the date of the gift or, as the case may be, the date of the inheritance.*

#### Section 51 CATCA2003 - Payment of tax and interest on tax

*(3) Notwithstanding subsection (2), interest is not payable on the tax—*

*(a) to the extent to which section 89(4)(a) applies, for the duration of the period from the valuation date to the date the agricultural value ceases to be applicable,*

*... etc*

#### **Submissions**

5. The Appellant submitted that, for the purposes of section 104 CATCA 2003, the clawback of the agricultural relief arose on the same 'event' and at the same time as the disposal of the land and that the CGT payable on the disposal of the land should be allowed as a credit against the CAT payable on the clawback of the agricultural relief. The Respondent submitted that there was no credit available pursuant to section 104 CATCA 2003 as the CGT and CAT liabilities did not arise on the same event.

#### **Analysis and findings**

6. This appeal concerns a dispute in relation to whether the Appellant is entitled to claim a credit for CGT paid on the disposal of the land in 2015, against the CAT payable



arising in respect of the clawback of agricultural relief per the provisions of s.89 CATCA 2003. The relevant provision is section 104 CATCA2003.

### *Onus of proof*

7. In appeals before the Tax Appeals Commission, the onus of proof rests on the Appellant. In appeals against assessments, the Appellant must prove on the balance of probabilities that the assessments are incorrect. The jurisprudence in this area is well established, see *inter alia* the cases of *O'Connell v Fyffes Banana Processing V ITR 131*, *Revenue Commissioners v Doorley V ITR 539*, *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 and *TJ v Criminal Assets Bureau*, [2008] IEHC 168.
8. The onus of proof in this case rested with the Appellant to show that section 104 CATCA 2003 clearly conferred a right of offset to CGT on the disposal of the land, against the CAT arising due to the clawback of agricultural relief.

### *Interest*

9. The Appellant contended that as interest pursuant to section 51(3) CATCA 2003 applied only from 2015 in relation to the clawback of CAT, this was consistent with the position that an event for the purposes of s.104 CATCA 2003 occurred in 2015. The Appellant contended that this event was the clawback of agricultural relief. The Appellant stated that, taking into consideration the application of s.51(3), the 2011 event (i.e. the inheritance of the land) '*has been dealt with and falls out of the picture*'.
10. The Respondent contended that if the Appellant's submission were correct then there would be no need for the statutory interest provision because, on the Appellant's submission, the interest would run only from the date of disposal in 2015. The Respondent contended that a clawback of relief was not an '*event*' but the consequence of an event. The Respondent submitted that the event was the inheritance of the land in 2011 upon which agricultural relief was claimed.



11. The Respondent submitted that section 51(3) CATCA 2003 acknowledges the fact that interest could not be charged from the date of the inheritance in circumstances where the taxpayer who inherited the agricultural property could not be expected to be in a position to foresee that the property might be disposed of at a future date within the 6-year period.

*Statutory Interpretation*

12. The Appellant contended for a literal construction in relation to the meaning of the words '*same event*' per section 104 CATCA2003 and in contending for the words to be afforded their ordinary and natural meaning, submitted and that the word '*event*' should be interpreted to mean; an occurrence or a transaction or something that happens.
13. The Respondent also contended for a literal construction. While the Respondent stated that the term '*same event*' per section 104 should be afforded its ordinary and natural meaning, the Respondent submitted the word '*event*' should be interpreted in its context in the legislation citing the dicta of Henchy J. in the *Inspector of Taxes v Kiernan* [1982] ILRM 13 and in particular the following statement at page 121: '*A word or expression in a given statute must be given meaning and scope according to its immediate context, in line with the scheme and purpose of the particular statutory pattern as a whole...*'
14. I am satisfied that there is no inherent ambiguity in the statutory wording used in section 104 CATCA2003 and, as a result, I accept the submission of both parties that the words therein should 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.



### *Charging regime*

15. The Appellant submitted that s.89(4)(aa) CATCA2003 sets out a particularised method for determining the amount to be charged pursuant to the clawback and that the sub-section comprises a separate charging regime, *i.e.* separate to the CAT charged in respect of the inheritance which arose in 2011.
16. The Respondent refuted this position stating that a clawback is a common mechanism used to withdraw reliefs granted where the assets in question have not been retained for a specific period. The Respondent cited business relief (section 101 CATCA 2003) and dwelling house relief (section 86 CATCA 2003) as examples of the use of clawbacks in the context of CAT.
17. The Respondent relied on section 9 of the CATCA 2003 which sets out the charge to inheritance tax and which provides; *'A capital acquisitions tax, to be called inheritance tax and to be computed in accordance with this Act, shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable inheritance taken by a successor'*. The Respondent stated that the liability arising on foot of the clawback did not give rise to a charge to CAT in itself but that it related back to the CAT charged in respect of the inheritance in 2011 and that it was a withdrawal of agricultural relief that was granted in respect of that inheritance.

### *Meaning of 'event'*

18. The Appellant contended that there were three events in this appeal; an inheritance in 2011 (upon which agricultural relief was claimed), a disposal of agricultural land in 2015 and a clawback in 2015 in relation to agricultural relief claimed in 2011.
19. The Appellant submitted that the clawback in 2015 arose from the same event as the disposal of agricultural land because the disposal of the land triggered the clawback and thus the disposal of the land generated exposure to CAT and CGT on the same event in accordance with section 104 CATCA 2003.



20. The Respondent submitted that for the purposes of section 104 the inheritance taken in 2011 was an event and the CGT taken on the disposal of the lands in 2015 was a separate event. The Respondent submitted that the CGT was not available for offset against the CAT payable arising from the clawback of the agricultural relief because the clawback related back to the inheritance in 2011 and was not an event in itself.
21. The Respondent cited section 573 TCA 1997, which provides that the devolution of the deceased's assets on death does not constitute a disposal for CGT purposes. The Respondent stated that as there was no CGT charge at the date of death, there was no CGT available for offset against inheritance tax arising in relation to the death of the disponent in accordance with s.104 CATCA 2003.
22. The Respondent contended that CAT did not arise on the 'same event' in 2015 for the purposes of section 104 CATCA 2003 because, although a clawback arose, it was a clawback of agricultural relief which applied in respect of an inheritance from the disponent in 2011 and not a CAT charge which arose in 2015.

*Statutory wording*

23. Turning to the statutory wording, section 89(4)(a) provides as follows:

Where—

- (i) all or any part of the agricultural property (other than crops, trees or underwood) comprised in a gift or inheritance is disposed of or compulsorily acquired within the period of 6 years [commencing on]<sup>6</sup> the date of the gift or inheritance, and
- (ii) the proceeds from such disposal or compulsory acquisition are not fully expended in acquiring other agricultural property within a year of the disposal or within 6 years of the compulsory acquisition,
- (iii) then, except where the donee or successor dies before the property is disposed of or compulsorily acquired, all or, as the case may be, part of the agricultural property shall, for the purposes of subsection (2) and in accordance with paragraph (aa), be treated as property comprised in the gift or inheritance which is not agricultural property, and the taxable value of the gift or inheritance shall be determined accordingly (without regard to whether the donee or successor has ceased to be a



farmer by virtue of the disposal or compulsory acquisition) and tax shall be payable accordingly.

[emphasis added]

24. The sub-section provides that where agricultural property has been sold within the six-year period, it will *'be treated as property comprised in the gift or inheritance which is not agricultural property'*.

25. In other words, any CAT which arises in respect of the clawback, relates to the event of the inheritance. In this case, the inheritance was taken in 2011 and section 89(4) operated to deem that part of the land disposed of in 2015, to be property comprised in the inheritance in 2011 which was *not* agricultural property. Thus the CAT liability arising on foot of the clawback relates back to the inheritance. It does not relate to the disposal of the land in 2015.

26. I accept the submission of the Respondent that s.89(4)(aa) does not create a separate charge to tax but provides a means of calculating the clawback in relation to property disposed of within the six-year period wherein the property disposed of is to be treated as *not* being agricultural property so that it falls outside of the relief and within the charge to CAT.

27. I determine that the clawback is not an *'event'* for the purposes of s.104 CATCA 2003, nor can it be said that the clawback and the capital gain (in respect of the disposal of land in 2015) arose in respect of the *'same event'* for the purposes of section 104 CATCA 2003. The Respondent submitted that the clawback was the consequence of an event, that event being the inheritance of the property from the disponer in 2011 and I accept this submission on behalf of the Respondent.

### **Conclusion**

28. I determine that the clawback is not an *'event'* for the purposes of s.104 CATCA 2003, nor can it be said that the clawback and the capital gain (in respect of the disposal of land in 2015) arose in respect of the *'same event'* for the purposes of section 104 CATCA 2003.





29. Accordingly, the assessment to Capital Acquisitions Tax in the sum of €365,473 in respect of the period **[DATE REDACTED]** May 2011 to **[DATE REDACTED]** November 2011 shall stand. This appeal is hereby determined in accordance with section 949AK TCA 1997.

**APPEAL COMMISSIONER**

**September 2017**

