



140TACD2020

BETWEEN/

[APPELLANT]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal against a Notice of Assessment to Capital Gains Tax for the year 2014 dated 6 June 2017. The balance due on the assessment is €112,859. The appeal relates to the application and interaction of section 598 and section 599 of the Taxes Consolidation Act, 1997 on the disposal of an asset.

Background

2. The return of income, charges and capital gains of [*Mrs A*] for the year 2013, received by revenue online service on 13 November 2014, shows a disposal of 2.84 hectares of land for consideration of €495,000. The tax return, under the heading 'Claim to Reliefs – Self' shows 'Retirement Relief – Within the Family'. The Self-Assessment to Capital Gains Tax of [*Mrs A*] for the year 2013 dated 14 November 2014 shows the amount of chargeable gains as nil and amount of tax payable as nil.



3. The disposal in the tax return relates to a Contract for Sale dated 12 June 2013 which describes the vendor as [Mrs A], the purchaser as the Appellant and the purchase price as €495,000. The property is described as 2.84 hectares of land situated in County [redacted] and comprised within various Land Registry folios. It further relates to a Stock Transfer Form dated 12 June 2013 which describes the transfer of 100 ordinary shares in [Company A] from [Mrs A] to the Appellant for consideration of €1.00.
4. The return of income, charges and capital gains of the Appellant for the year 2014, received by revenue online service on 12 November 2015, shows a disposal of 2.84 hectares of land for consideration of €510,000 with a chargeable gain of €6,000, net chargeable gain of €4,730 and tax payable of €1,561. This was a disposal by the Appellant to an unconnected third party.
5. The relationship between [Mrs A] and the Appellant is parent and child.
6. On 25 February 2016 [Mrs A] received a notification of revenue audit. On 7 June 2016 the Revenue Commissioners requested the following from [Mrs A]:

“A computation of CGT liability and request for any statutory relief you wish to claim for the disposal to your son [Appellant] in 2013”
7. On 24 June 2016, an agent for [Mrs A] submitted a capital gains tax computation for the disposal to the Appellant in the following terms:

“We attach our client’s capital gains tax computation for 2013 and as previously advised our client wishes to claim relief under S598 TCA on the disposal.”

The computation submitted was:

	€	€
Sale Proceeds		495,000
Cost of Sale		0
		495,000
Cost	47,339	
Legal and Other costs	635	
	47,974	
Indexed @ 1.309	1.309	-62,798
Enhancement Expenditure	69,182	
Indexed @ 1.309	1.309	-90,559
Gain		341,643
Less: Annual Exemption		-1,270
Chargeable Gain		340,373
CGT @ 33%		112,323
Retirement Relief – S598 TCA 1997		-112,323
Tax Payable		0

Legislation

8. Section 598 of the Taxes Consolidation Act, 1997 provides:

- “(2) (a) ...
- (b) *Subject to this section, where an individual who has attained the age of 66 years disposes of the whole or part of his or her qualifying assets on or before 31 December 2013, then –*
- (i) *if the amount or value of the consideration for the disposal does not exceed €750,000, relief shall be given*



in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;

(ii) if the amount or value of the consideration for the disposal exceeds €750,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and €750,000.

(c) ...

(d) For the purposes of paragraphs (a), (b) and (c), the amount of capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.”

9. Section 599 of the Taxes Consolidation Act, 1997 provides:

“(1) (a) In this section ‘child’, in relation to a disposal for which relief is claimed under this section, includes –

(i) ...

(ii) ...

(iii) ...

(b) “Subject to this section –

(i) ...

(ii) where an individual who has attained the age of 66 years disposes of the whole or part of his or her qualifying assets to his or her child on or before 31 December 2013, relief shall be given in respect of the capital gains tax chargeable on any gain accruing on the disposal;

(iia) ...

(iii) ...

(c) For the purposes of paragraph (b), the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain, but

nothing in that paragraph shall affect the computation of gains accruing on the disposal of assets other than qualifying assets by an individual who makes a disposal to which that paragraph applies.

(d) ...

...

(4) (a) *Where assets comprised in a disposal to a child in respect of which relief has been granted under this section are, within 6 years of the disposal by the individual concerned, disposed of by the child, the capital gains tax which if subsection (1) had not applied would have been charged on the individual on his or her disposal of those assets to the child shall be assessed and charged on the child, in addition to any capital gains tax chargeable in respect of the gain accruing to the child on the child's disposal of those assets.*

(b) *An assessment to give effect to this subsection shall not be out of time if made within 4 years after the end of the year of assessment in which the assets are disposed of by the child."*

Submissions on behalf of the Appellant

10. The Appellant submits that [Mrs A] relies on section 598 on the disposal to the Appellant in 2013, and consequently, the provisions of section 599 are not relevant on the subsequent disposal by the Appellant to an unconnected third party in 2014. The Appellant submits that selecting 'Retirement Relief – Within the Family' in the tax return of [Mrs A] for 2013 does not represent that [Mrs A] was claiming relief under section 599. The Appellant submits that selecting this description on the prescribed form merely reflects the factual circumstance that the disposal was within a family, being from a parent to a child, given that the

alternative description of ‘Retirement Relief – Outside the Family’ would not correctly reflect the factual position. The Appellant relies on the judgment in *Stanley -v- Revenue Commissioners* [2018] ILRM 397 to submit that the requirement of [Mrs A] was to fully and correctly complete the prescribed form and selecting ‘Retirement Relief – Outside the Family’ could be construed as not fully and correctly completing the prescribed form.

11. The Appellant submits that the disposal by [Mrs A] to the Appellant in 2013 comes within section 598(2)(b)(i), in that:

- [Mrs A] had attained the age of 66 years;
- The definition of qualifying assets was satisfied,
- The disposal occurred on or before 31 December 2013 and
- The amount of the consideration did not exceed €750,000.

The Appellant relies on the wording in 598(2)(b)(i) that ‘*relief shall be given*’ to support the submission that [Mrs A] is entitled to relief under section 598 on satisfying the conditions therein.

12. In the alternative, and if relief had been claimed under section 599 such that the provisions of section 599(4) are triggered on the disposal by the Appellant to an unconnected third party in 2014, the Appellant submits that the effect of the clawback in section 599(4) is that the Appellant is assessed and charged on the capital gains tax which would have been charged on [Mrs A] on her disposal of assets to the Appellant had section 599(1) not applied. The Appellant submits that the effect of section 599(4) is simply that in calculating the capital gains tax of [Mrs A] on the disposal of assets in 2013 no relief is applied under section 599(1). Consequently, it is submitted, this means that whatever matters are relevant to a computation of capital gains tax are considered, including whether the disposal by [Mrs A] to the Appellant comes within the provisions of section 598. The consequence for the Appellant of section 599(4) is that the capital gains tax, if any, of [Mrs A] is assessed on the Appellant.

13. The Appellant submits that it is relevant to the computation of capital gains tax of [Mrs A] that the conditions for relief under section 598 are satisfied on the disposal by [Mrs A] to the Appellant. Consequently, the capital gains tax that would have been charged on [Mrs A] is nil and the amount assessed on the Appellant is nil.
14. The Appellant submits that no legal or statutory basis has been identified by the Revenue Commissioners to support the submission that section 598 is a general provision and section 599 is a specific provision and, therefore, section 599 must be applied before section 598. The Appellant submits that the wording of section 598 and section 599 shows that the sections are read together and are not mutually exclusive. The Appellant submits, as an example, the wording of section 599(5) which provides '*The consideration on a disposal within subsection (1) shall not be taken into account for the purposes of aggregation under section 598(3)*'. If section 598 and section 599 are mutually exclusive, there would be no requirement for a cross reference to aggregation.

Submissions on behalf of the Revenue Commissioners

15. The Revenue Commissioners submit that section 598 and section 599 are mutually exclusive and should be constructed in a manner that section 598 is a general provision and section 599 is a specific provision. The Revenue Commissioners submit that the factual circumstances determine whether section 598 or section 599 apply, and as the disposal by [Mrs A] to the Appellant was a disposal to a child, and the other conditions in section 599 are met, relief is granted under section 599. The Revenue Commissioners submit that the description in the prescribed form of 'Retirement Relief – Within the Family' and 'Retirement Relief – Outside the Family' are designed to reflect the relevant legislative provisions – 'within the family' relates to section 599 and 'outside the family' relates to section 598. The Revenue Commissioners submit that the disposal by [Mrs A] to the Appellant was correctly returned by [Mrs A] as being

‘within the family’ and consequently, relief was granted by the Revenue Commissioners under section 599.

16. The Revenue Commissioners submit that as relief was granted under section 599, then the disposal by the Appellant to an unconnected third party in 2014 triggered the clawback in section 599(4). The Revenue Commissioners submit that the effect of section 599(4) is simply that the relief granted under section 599(1) is clawed back and no further computation is required as the amount of capital gains tax chargeable is the amount as computed before the relief is applied. In the computation submitted by the agent for [Mrs A] on 24 June 2016, this means a clawback of €112,323 and, consequently, the amount of capital gains tax that would have been charged on [Mrs A] is €112,323, which is the amount to be assessed on the Appellant. The Revenue Commissioners submit that to apply section 599(4) in the manner submitted by the Appellant could create computational anomalies. The Revenue Commissioners submit that there is no legislative provision which allows the Appellant to invoke section 598 on the triggering of the clawback in section 599(4), and that to contend that relief is available under section 598 retrospectively, in circumstances where relief had been claimed under section 599 but clawed back, would be contrary to the principles of statutory interpretation and give rise to an absurdity.

Analysis and Findings

17. It is accepted by the parties that the disposal by [Mrs A] to the Appellant was at market value. It is further accepted that [Mrs A] had attained the age of 66 years at the relevant time, that [Mrs A] disposed of qualifying assets (comprising land and shares) and that the disposal was to a child (the Appellant).
18. The parties disagree on whether [Mrs A] relied on section 598 or section 599 on the disposal of qualifying assets to the Appellant in 2013. In relation to the submission by the Revenue Commissioners that selecting ‘Retirement Relief – Within the Family’ in the prescribed form means a person is claiming relief

under section 599, it is instructive to examine the definition of ‘family’ in section 598 (which is stated to relate to section 598 and section 599) - “*“family” in relation to an individual, means the husband or wife of the individual, and a relative of the individual or of the individual’s husband or wife, and “relative” means brother, sister, ancestor or lineal descendant*’. Therefore, the word ‘family’ may be construed as meaning a husband, wife, brother, sister, ancestor or lineal descendant. Also, while section 599 is headed ‘Disposals within family of business or farm’ the section refers to disposals to a child, rather than the wider meaning of ‘family’.

19. It is noteworthy that in correspondence from the Revenue Commissioners dated 7 June 2016, the Revenue Commissioners specifically request details of ‘*any statutory relief you wish to claim for the disposal to your son [Appellant] in 2013*’. This correspondence post-dates the tax return of [Mrs A] for 2013 wherein the description ‘Retirement Relief – Within the Family’ had been selected. If selecting this description in the tax return represents to the Revenue Commissioners a claim to relief under section 599, the request from the Revenue Commissioners for details of ‘any statutory relief’ would not be necessary. In addition, in response to the request, the agent for [Mrs A] submitted a computation which included relief under section 598.
20. The Appellant submits that section 598(2)(b)(i) applies to the disposal by [Mrs A]. Section 598(2)(b)(i) provides ‘*relief shall be given*’. The Appellant submits that as the disposal by [Mrs A] comes within section 598, then relief is given under section 598. The Revenue Commissioners submit that section 599(1)(b)(ii) applies to the disposal by [Mrs A]. Section 599(1)(b)(ii) provides ‘*relief shall be given*’. The Revenue Commissioners submit that if the factual circumstances are a disposal to a child, then the wording of section 599(1)(b)(ii) means relief is granted under section 599. The manner in which the ‘shall’ in each section applies may be gleaned from a reading of the words in section 599. Section 599(1)(a) provides ‘*In this section ‘child’, in relation to a disposal for which relief is claimed under this section...*’ Section 599(4)(a) provides ‘*Where*

assets comprised in a disposal to a child in respect of which relief has been granted under this section...’. Section 599(6) provides ‘Relief under this section may be claimed...’. The words ‘claimed’ and ‘granted’ are not mirrored in section 598. These words must be given meaning in construing the interaction of section 598 and section 599. Where relief is claimed under section 599, relief is given under section 599, if the conditions therein are met. Relief is given under section 598, if the conditions therein are met.

21. In the circumstances, I do not accept the submission of the Revenue Commissioners that selecting the description ‘Retirement Relief – Within the Family’ represents a claim to relief under section 599 given the statutory definition of ‘family’ in section 598 and section 599 and the absence of a specific reference to the legislative provisions on the prescribed form. Furthermore, the Revenue Commissioners requested details of any statutory relief being claimed by [Mrs A] and [Mrs A] submitted a computation which included section 598. I find, on the facts, that [Mrs A] fully and correctly completed the tax return for 2013 by selecting ‘Retirement Relief – Within the Family’ and that the conditions for relief under section 598 were met on the disposal of qualifying assets by [Mrs A] to the Appellant in 2013. Consequently, the clawback in section 599(4) on the disposal by the Appellant to an unconnected third party in 2014 does not arise.
22. For completeness, I will address the submissions in relation to the clawback in section 599(4) on the disposal of qualifying assets to a child. The fact that an interpretation of section 599(4) may create computational anomalies does not provide a basis to interpret the provisions in the manner submitted by the Revenue Commissioners. No great weight can be attached to potential computational anomalies if the proper construction of section 599(4) means that the capital gains tax which would have been charged on the disposal is the capital gains tax chargeable having regard to whatever matters are relevant to a computation of capital gains tax other than relief under section 599(1). The Appellant submits that the interpretation of section 599(4) favoured by the



Revenue Commissioners gives rise to a situation whereby [Mrs A] is treated less favourably for tax purposes on a disposal to a child than on a disposal to an unconnected third party, as the disposal of qualifying assets to an unconnected third party for €495,000 in 2013 would be entitled to relief under section 598 with no capital gains tax chargeable, whereas the disposal of qualifying assets to a child for €495,000 in 2013 and subsequent clawback gives rise to capital gains tax of €112,323.

23. In any event, the starting point is the wording in the legislation. Section 599(4) refers to '*the capital gains tax which if subsection (1) had not applied would have been charged on the individual on his or her disposal of those assets to the child*'. The question is – if section 599(1) had not applied what is the capital gains tax which would have been charged on [Mrs A] on the disposal of assets to the Appellant?
24. Based on the submissions of the Revenue Commissioners, the reason for excluding section 598 on the disposal by [Mrs A] to the Appellant was that section 599 applied given the factual circumstance of being a disposal to a child. In my opinion, if section 599 is not applied, there is nothing in the wording of section 599 which excludes other legislative provisions in the computation of the capital gains tax on the disposal of an asset. In the circumstances, the capital gains tax which would have been charged on [Mrs A] on the disposal of assets to the Appellant is computed having regard to the provisions of the Taxes Acts, other than section 599.

Determination

25. In respect of the appeal against the Notice of Assessment to Capital Gains Tax for the year 2014 dated 6 June 2017, and based on a review of the facts and a consideration of the submissions, materials and evidence provided by the parties, I determine that the Appellant has been overcharged. The assessment should be reduced to capital gains tax of €1,561.

26. This appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

12 MAY 2020