



146TACD2020

**BETWEEN/**

**[APPELLANT]**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Appeal**

1. This is an appeal against a Capital Acquisitions Tax Amended Assessment dated 26 May 2017. The period of assessment is 1 September 2012 to 31 August 2013. The assessment describes the date of inheritance as [*date of death*] and the valuation date as [*valuation date*]. The taxable excess is €115,970 with capital acquisitions tax @ 33% of €38,270. The capital acquisitions tax paid is €29,400 and the balance due is €8,870. The Appellant paid the balance due of €8,870 on 6 June 2017.

**Background**

2. The Appellant's mother, [*Mrs A*], died on [*date of death*]. The Last Will and Testament of [*Mrs A*] dated [*redacted*] provides:

*"I, [Mrs A] of [Property A] in the County of [redacted] do HEREBY REVOKE all former Wills and other testamentary dispositions heretofore made by me*



*AND DO DECLARE this to be my last Will and Testament. I APPOINT my son [Mr X] to be the sole Executor of this my Will AND I DIRECT him as soon as convenient after my decease to pay my just debts funeral and testamentary expenses. Subject thereto I GIVE DEVISE AND BEQUEATH all my property both real and personal and of every nature kind and description whatsoever or wheresoever situate to my three children, my daughter [Ms Y], my son [Mr X] and my son [Appellant] to be divided equally between the three of them.”*

3. [Mr X], as executor of the estate of [Mrs A], completed an Inland Revenue Affidavit (Form CA24). The Inland Revenue Affidavit was sworn by [Mr X] on [redacted] and included the following details:

Real and leasehold property ([Property A])	€425,000
Assets with financial institutions	€465,708
Proceeds of life insurance policies	€7,797
Stocks, shares and securities	€11,577
<b>TOTAL GROSS IRISH ESTATE</b>	<b>€910,082</b>

<b>TOTAL IRISH DEBTS</b>	<b>(€7,590)</b>
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<b>TOTAL NET IRISH ESTATE</b>	<b>€902,492</b>
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<b>TOTAL NET FOREIGN ESTATE</b>	<b>€25,582</b>
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4. According to the Inland Revenue Affidavit, [Mrs A] was born on [date of birth] and died on [date of death], at the age of 95 years. The Inland Revenue Affidavit computed the total net estate of [Mrs A] as €928,074. The beneficiaries are described as [Ms Y], [Mr X] and the Appellant. The approximate value of the benefit of each beneficiary was given as €300,000.
5. [Mr X], in his capacity as executor of the estate of [Mrs A], signed a Contract for Sale for [Property A] dated [redacted] to an unconnected third party for a purchase price of €520,000. The special conditions recite that the completion

date would be ten days after notification of the issue of the Grant of Probate. A Grant of Probate issued on [*valuation date*].

6. At [*valuation date*], being the valuation date, the total gross estate of [*Mrs A*] was €1,043,257 less expenses of €20,347 giving a total net estate of €1,022,910. In accordance with the Will of [*Mrs A*], the estate was divided equally between her three children meaning each child (including the Appellant) was entitled to €340,970.
7. On 22 October 2013, the Appellant delivered a Form IT38 declaring a net taxable value of benefits of €314,090, taxable excess of €89,090 and capital acquisitions tax @ 33% of €29,400. The Appellant described the benefit as an inheritance and the nature of benefit as ‘other property’. The return describes the date of inheritance as [*date of death*] and the valuation date as [*valuation date*].

### **Legislation**

8. Section 9 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

***“Charge of inheritance tax.***

9. *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.”*

9. Section 10 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

***“Inheritance deemed to be taken.***

10. (1) *For the purposes of this Act a person is deemed to take an inheritance, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession 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."*

10. Section 30 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

***"Valuation date for tax purposes.***

30. (1) ...
- (2) ...
- (3) ...
- (4) *The valuation date of a taxable inheritance, other than a taxable inheritance referred to in subsection (2) or (3), is the earliest date of the following:*
- (a) *the earliest date on which a personal representative or trustee or the successor or any other person is entitled to retain the subject matter of the inheritance for the benefit of the successor or of any person in right of the successor or on that successor's behalf,*
- (b) *the date on which the subject matter of the inheritance is so retained, or*
- (c) *the date of delivery, payment or other satisfaction or discharge of the subject matter of the inheritance to the successor or for that successor's benefit or to or for the benefit of any person in right of the successor or on that successor's behalf."*

11. Section 86 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

***"Exemption relating to certain dwellings.***

86. (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 (exclusive of the site of the dwelling-house) of one acre but if the area of the curtilage (exclusive of the site of the dwelling-house) exceeds one acre 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.*

- (2) ...
- (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 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 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).*

(3A) ...”

12. Section 10 of the Succession Act, 1965 provides:

***“Devolution of real and personal estate***

10. (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) *The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate or interest not ceasing on his death, and include property over which he exercised by will a general power of appointment.*

(5) *This section shall apply to property vested on any trust in a deceased person solely, as it applies to his real and personal estate.”*



### **Submissions on behalf of the Appellant**

13. At the hearing, the Appellant stated that he resided at [*Property A*] from 1997 to 2013 and provided care for his mother, [*Mrs A*]. The Appellant stated that in 2007 his mother, at the age of 90 years, was hospitalised having suffered a heart attack. The Appellant stated that his mother remained in institutional care from 2007 until her death in 2013.
14. At the hearing, the Appellant stated that his brother, [*Mr X*], made the decision to sell [*Property A*] without consulting the Appellant or establishing whether the Appellant had the ability to purchase or secure alternative accommodation. The Appellant did not contest the actions being taken by his brother. The Appellant produced a letter from St. Vincent's University Hospital dated 6 February 2020 which provides brief details of his medical history, and specifically treatment from January 2015 to February 2016. The letter describes the Appellant as being under active follow-up but otherwise stable at present. The Appellant's date of birth is given as [*redacted*].
15. The Appellant submits that he paid capital acquisitions tax of €29,400 as this was the amount he was advised to pay. At the hearing, the Appellant could not recollect the person who gave him this information. The Appellant submits that he received less from the estate than his siblings as prior to her death he had to borrow money from his mother to survive. At the hearing, the Appellant stated that the money he borrowed from his mother was deducted from his benefit and returned to her estate.
16. In communications to the Tax Appeals Commission, the Appellant stated he was appealing on the grounds of an entitlement to dwelling-house exemption, mis-information and natural justice. At the hearing, the Appellant stated that paying capital acquisitions tax was unfair given that he had resided at [*Property A*] and provided care for his mother. The Appellant stated that he was seeking a repayment of the capital acquisitions tax of €38,270 as he required the money



to survive as he had practically nothing remaining of the inheritance received. The Appellant had ongoing ill-health but was stable at present. The Appellant stated that he became aware of dwelling-house exemption and considered he was entitled to the exemption as he resided at [*Property A*]. The Appellant did not expect to pay capital acquisitions tax on [*Property A*] as it was his home.

17. At the hearing, the Appellant accepted that he received money as the inheritance from the estate of his mother and did not receive a dwelling-house. The Appellant did not dispute that the inheritance was €340,970.

**Submissions on behalf of the Respondent**

18. The Revenue Commissioners submit that the Appellant has taken a benefit on the death of his mother, [*Mrs A*]. The inheritance comprised money of €340,970. This represented one-third of the net estate of [*Mrs A*], in accordance with the Will of [*Mrs A*]. The total net estate of [*Mrs A*] has been verified by the Revenue Commissioners as €1,043,257. The valuation date was [*valuation date*]. The value of the taxable inheritance taken on the valuation date by the Appellant was €340,970. As the Appellant was a child of [*Mrs A*], the group threshold was €225,000. The computation of the capital acquisitions tax is:

Taxable Inheritance	€340,970
Group Threshold	(€225,000)
Taxable Excess	€115,970
Tax @ 33%	€38,270

19. The Revenue Commissioners submit that as [*Property A*] was not comprised in the inheritance taken by the Appellant, the exemption in section 86 does not arise for consideration.



### Analysis and Findings

20. Section 9 of the Capital Acquisitions Tax Consolidation Act, 2003 provides that capital acquisitions tax, to be called inheritance tax, shall be charged on the taxable value of every taxable inheritance taken by a successor. Section 10 of the Capital Acquisitions Tax Consolidation Act, 2003 provides that a person is deemed to take an inheritance where under any disposition a person becomes beneficially entitled in possession on a death to any benefit otherwise that for full consideration in money or money's worthy paid by the successor.
21. The Appellant became entitled to a benefit on the death of his mother, [Mrs A]. The nature of the benefit derived from the Will of [Mrs A] dated [redacted]. [Mrs A] gave her real and personal property to her three children to be divided equally between them. The Appellant accepts that he received money of €340,970 from the estate of his mother. The money of €340,970 is a taxable inheritance taken by a successor (the Appellant) which is chargeable to capital acquisitions tax.
22. Exemptions and reliefs may be available in computing capital acquisitions tax. The Appellant seeks to avail of the exemption under section 86 of the Capital Acquisitions Tax Consolidation Act, 2003, commonly referred to as 'dwelling-house exemption'. Section 86(3) provides that a dwelling-house comprised in an inheritance taken by a successor is exempt from the charge to capital acquisitions tax if certain conditions are met. At the hearing, the Appellant referred to the proceeds from the sale of [Property A] being part of the estate of [Mrs A]. This does not equate to a dwelling-house being comprised in an inheritance taken by the Appellant. In *Deane -v- The Revenue Commissioners* [2018] IEHC 519, Costello J. stated (at paragraph 34) “.. in order to come within the exemption a successor must take the dwelling house by way of inheritance and must satisfy the occupational requirements”. A dwelling-house was not taken by way of inheritance by the Appellant from his mother.



23. In accordance with the Will of [Mrs A], her estate was divided equally between her three children. The Will did not contain any specific devises or legacies, meaning [Mrs A] did not identify specific property to be bequeathed to any particular beneficiary. The estate of [Mrs A] was passed to her three children through the residue of the estate. The judgment of Costello J. in *Deane -v- The Revenue Commissioners* [2018] IEHC 519 describes the position with regard to an estate which is administered and distributed through the residue of the estate:

*“19. Prior to the death of the testator, the testator was the owner of the family home and the other houses comprised in his estate. As the testator’s estate devolved to his children by way of a residue clause, one must consider the nature of the interest held by Ms. Deane, as a residuary legatee, pending the administration of the estate. Section 10 of the Succession Act, 1965 provides that 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 (sub. para. 1). By virtue of subs. 2 the personal representatives of a deceased person “are deemed in law his heirs and assigns within the meaning of all trusts and powers”. Therefore, on the death of the testator, the estate (both legal and beneficial) devolved on and became vested in his personal representatives, notwithstanding anything in the will. His personal representatives were deemed to be his heirs and assigns.*

20. *In any estate there will be funeral expenses, legal costs and there may be liabilities and claims against the estate. Property in the estate may ultimately be sold to discharge these expenses and liabilities or property appropriated to satisfy claims, such as a claim brought pursuant to s.117 of the Act or the legal right share of a surviving spouse or civil partner. As a result, property in the estate may become unavailable to beneficiaries named in the will due to the obligation to discharge these*



*costs and expenses and the requirement to comply with the claims in advance of any distribution to the beneficiaries named in the will. These liabilities must be discharged first from the residue of the estate, though sometimes it is necessary to realise specific legacies in order to satisfy all of the claims on the estate. Where a will makes no specific bequests and where all the property passes in the residue and is left to more than one beneficiary, it cannot be said that any one person has any right to any particular asset in the estate prior to the date when the net value of the estate is established.*

21. *In Keating's, Equitable Succession Rights, 2005 p.93 the author states as follows:*

*“Before the residue of the estate has become ascertained by the personal representatives, the beneficiaries have no legal or equitable right to any part of it, as the whole estate would have devolved and vested in the personal representatives. They will of course have a right to ensure that the estate has been duly administered by the personal representatives but other than that they will have to wait until the residue of the estate is first ascertained.”*

22. *In Gleeson -v- Feehan [1997] 1 ILRM 522 Keane J. in the Supreme Court held:*

*“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.”*



### **Determination**

24. For the reasons outlined above, I determine that an inheritance was taken by the Appellant on the death of his mother, [*Mrs A*]. The taxable inheritance comprised money. The value of the taxable inheritance taken by the Appellant was €340,970. I determine that the inheritance taken by the Appellant did not comprise a dwelling-house and consequently the exemption under section 86 of the Capital Acquisitions Tax Consolidation Act, 2003 does not apply.
25. Based on a review of the facts and a consideration of the evidence, materials and submissions of the parties I determine that the Capital Acquisitions Tax Amended Assessment dated 26 May 2017 for the period of assessment 1 September 2012 to 31 August 2013 and capital acquisitions tax of €38,270 shall stand. This appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act, 1997.

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**FIONA McLAFFERTY**  
**APPEAL COMMISSIONER**

**27 MAY 2020**

