



BETWEEN/

REDACTED

40TACD2021

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against an amended assessment to Capital Acquisitions Tax (CAT) in relation to the period of assessment 1 September 2015 to 31 August 2016.
2. The amount of tax involved in this appeal is €29,700.
3. The formal notice of amended assessment issued on 25 July 2018 following prolonged correspondence between the parties.
4. The Notice of Appeal was received by the Tax Appeals Commission (TAC) on 22nd May 2017. The TAC accepted the appeal in the circumstances where the TAC was unaware that the formal notice of amended assessment had not issued in 2017.
5. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 14 December 2020.



Background and Agreed Facts

6. The Appellant's father, Mr REDACTED died on 8th REDACTED. The sole legatees of his Will were the Appellant and her mother REDACTED.
7. The Will of REDACTED appointed his son REDACTED as Executor and instructed the payment of all lawful debts, funeral and testamentary expenses. It stated in relation to his estate:

"I give devise and bequeath the dwellinghouse and contents therein at REDACTED to my wife REDACTED for her life and after her death to my daughter REDACTED for her own use and benefit absolutely.

I give devise and bequeath all the rest residue and remainder of my estate both real and personal of every nature and kind whatsoever and wherever situate to my wife REDACTED for her own use and benefit absolutely."

8. Mrs. REDACTED died on REDACTED and REDACTED is the joint executor of her estate.
9. The dwellinghouse at REDACTED was valued at €370,000 as at 30 June 2016 on behalf of the Executor.
10. The CAT assessment is based on this valuation less the appropriate threshold of €280,000 resulting in an assessed liability of €29,700 (i.e. €90,000 at 33%).

Legislation

11. Succession Act, 1965

Section 10 of the Succession Act, 1965 provides:

"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."*

12. Capital Acquisitions Tax Consolidation Act, 2003 ("CAT Act")

The relevant sections of the Capital Acquisitions Tax Consolidation Act, 2003 ("CAT Act") are as follows:

"2. 2(1) ... "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;

... "disposition" includes—

(k) a will or other testamentary disposition"

s. 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.

s. 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.

(2) Subsections (2), (4) and (5) of section 5 shall apply, with any necessary modifications, in relation to an inheritance as they apply in relation to a gift.

s. 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) In this section any reference to a donee or successor is construed as including a reference to the transferee referred to in section 32 (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).



Submissions - Appellant

13. The Appellant in her Statement of Case stated outlined the grounds for exemption to the CAT liability based on fairness, understanding, spirit of the law and mitigating circumstances. She also requested a plea for discretion.
14. The executor of the will of Mr REDACTED advised that he had requested a ruling from the CAT department of the Respondent on two occasions following the death of his mother. He advised that he was informed that there was no tax due as the Appellant would have been deemed to have inherited 90% of the property in 1987 and the balance on the death of his mother in 2016.
15. The executor advised that when he sought this interpretation in writing he was informed that he had received incorrect information. It was pointed out to him that it was wrongly interpreted that the Appellant inherited the property in 1987 with a right of residence rather than a life interest for her mother.
16. The Appellant has opined that there would have been no tax due in 1987 as the property was valued at £50,000 which amount was below the CAT threshold for inheritances from a parent to a child.
17. The Appellant submitted that it was the intention of her father to leave the property to the Appellant with a right of residence rather than a life interest to his wife the Appellant's mother.
18. The executor outlined that his father would not have been aware of the nuances caused by the creation of a life interest as he had made his final will and testament when seriously ill in hospital and died some 18 days later.
19. The executor pointed out that there was no gain for the Appellant in the wording of the will made in 1987. He advised that it may have been assumed at the time that:
 - a) Property values would not increase dramatically from that point,
 - b) The threshold of almost 4 to 1 (property values to personal thresholds) as pertained in 1987 would keep pace and be maintained at that level and
 - c) His mother would not survive his late father by 29 years.



20. The Appellant submitted that she had resigned from her job as a teacher in REDACTED in 2012 and moved to Dublin to care for her elderly mother.
21. The Appellant further submitted that she had purchased a house in REDACTED in 2004 which was in negative equity in 2012 when she moved back to Dublin. In essence therefore the mortgagor was the *de-facto* owner of the property in REDACTED.
22. The Executor opined that it was incumbent on the Respondent to be fair to the Appellant who through no fault of her own had incurred a CAT liability that would have been avoided entirely if her father had worded his will differently or if her mother had converted her life interest in the property to a right of residence.
23. In summary the executor on behalf of the Appellant sought to have the assessment set aside on the basis that the intention of his father was to leave the house to the Appellant and to provide a right of residence in the house to his wife rather than to give a life interest to his wife and to provide for his daughter as the remainderman.

Submissions – Respondent

24. The Respondent quoted from s.2 of the CAT Act 2003 in support of the meaning of the date of inheritance as follows:

“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,



25. The Respondent quoted from s. 3 (1) the CAT Act 2003 in support of the meaning of “on a death” as follows:

(1) In this Act, “on a death”, in relation to a person becoming beneficially entitled in possession, means—

(a) on the death of a person or at a time ascertainable only by reference to the death of a person,

(b) under a disposition where the date of the disposition is the date of the death of the disposer,

(c) under a disposition where the date of the disposition is on or after 1 April 1975 and within 2 years prior to the death of the disposer, or

(d) on the happening, after the cesser of an intervening life interest, of any such event as is referred to in subsection (2).

26. The Respondent submitted that the wording of Mr. REDACTED will must be taken as it was written and is clear and unambiguous in that it stated:

“I give devise and bequeath the dwelling house and contents therein at REDACTED to my wife REDACTED for her life and after her death to my daughter REDACTED for her own use and benefit absolutely”.

27. The Respondent submitted that accordingly the date of the inheritance of the property by the Appellant is 30th of June 2016 following the cessation of the life interest of Mrs REDACTED.

28. The Respondent submitted that it had considered if the Appellant was entitled to dwellinghouse relief arising from the fact that the Appellant resided since 2012 at the house inherited by her.

29. The Respondent opined that the Appellant does not satisfy all the conditions for relief set out in s.86 of the CAT Act 2003 and is not entitled to dwellinghouse relief because she owned another dwellinghouse on the date of the inheritance.

30. The Respondent stated at the Appeal Hearing that it was obliged to apply the provisions of legislation in relation to the matter under appeal and confirmed the date of the inheritance as being the date of death of the person with the life interest.



31. The Respondent acknowledged that the executor may have received incorrect advice from its staff member based on the circumstances outlined by the executor in advance of the provision of full information by the executor. In the circumstances the Respondent agreed to reconsider the application of the surcharge (which is outside of this appeal) in relation to the late filing of the CAT return.
32. The Respondent agreed with the Appellant's submission in relation to the valuation date of REDACTED 2016 and the value of the property at that date.

Analysis and Findings

33. The Appellant's father, Mr REDACTED died on REDACTED leaving a life interest in his dwellinghouse to his wife REDACTED and after her death to his daughter REDACTED, the Appellant in this appeal.
34. Mrs REDACTED died on REDACTED 2016 and the Appellant as the remainderman then became entitled to the property absolutely as provided by the will of her late father REDACTED.
35. Where a testator bequeaths a life interest in property to a beneficiary in his or her Will, that beneficiary has an entitlement to live in the property and to retain such income as arises from the property until his or her death. When that beneficiary dies, the property will then devolve on a beneficiary known as the remainderman, who will then take a full freehold interest in the property unless the Will provided otherwise.
36. Section 2(1) of the CAT Act 2003 defines the date of an inheritance as including the happening of events as set out in s. 3 (2). Such events include the cessation of a life interest as provided for in s. 3 (1) (d). Where an intervening life interest ceases as in this case, the valuation date is the date of the death of the life tenant.
37. The Appellant is not entitled to dwellinghouse relief as she owned another dwellinghouse on the date of the inheritance.
38. The determinations that can be made by an Appeal Commissioner are those delineated in s.949AK and s.949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions,



determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation.

39. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs. Accordingly, I am satisfied that it would be *ultra vires* for me to embark upon a consideration of, or to make a finding or determination in relation to, the Appellant's view on the matter of her father's intentions in relation to providing a right of residence for her mother rather than a life interest. The will created a life interest for the Appellant's mother and the Appellant succeeded that interest on the death of her mother. I must therefore decline to consider this argument or to make any finding in relation thereto.

Determination

40. Based on a consideration of the evidence and the submissions, I find that the Respondent has correctly made an amended assessment to Capital Acquisitions Tax (CAT) in relation to the period of assessment 1 September 2015 to 31 August 2016 in the amount of €29,700.

41. The Appellant has failed in her appeal against the amended assessment.

42. This appeal is determined in accordance with s.949AK TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
22 JANUARY 2021

