



110TACD2022

Between

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against an assessment to Capital Acquisitions Tax (“CAT”) raised by the Revenue Commissioners (“the Respondent”) on the 5th November 2018.
2. The assessment covers the period 1st September 2008 to 31st August 2009 and the total CAT due on the assessment amounts to €21,788. The Appellant is appealing the assessment in accordance with section 67 of the Capital Acquisitions Tax Consolidation Act 2003 (“CATCA 2003”).

Background

3. The Appellant, who is both the Executor and a beneficiary under the will of his late uncle (“the deceased”), inherited 240 acres of land (“the inherited land”) and a one sixth share of the residue of the Estate. The deceased died on the 10th January 2009.
4. The inherited land included 70 acres which were planted for forestry and the remainder, 170 acres, were agricultural land. The inherited land was valued at the date of death of the deceased at €1,350,000 by an auctioneer who provided a valuation report dated 7th

September 2009. The Estate did not include any livestock or agricultural machinery. The Appellant's share of the residue of the Estate was €18,291 and this is not in dispute between the Appellant and the Respondent.

5. An Inland Revenue Affidavit (called a "Statement of Affairs (Probate) Form SA2" since 14th September 2020) was completed by the deceased's agent which included the value of the inherited land as per the auctioneer's report at €1,350,000. Probate was obtained from the High Court on the 23rd November 2010 which reflected the valuation of the lands as €1,350,000.
6. The Appellant's agent, who had also acted as the deceased's agent, submitted a capital acquisitions tax return on behalf of the Appellant on the 28th September 2017. On that return, the agent elected the deceased's date of death as the appropriate valuation date to be used for the purpose of establishing the Appellant's liability to CAT. The Appellant's agent claimed both "agricultural relief" and "favourite nephew relief" which resulted in no CAT being due by the Appellant. Agricultural relief is a relief available under section 89 CATCA 2003 where certain qualifying criteria is fulfilled and when applicable has the effect of discounting down the value of agricultural assets by 90% of their market value for the purpose of assessment to CAT. Favourite nephew (or niece) relief is a separate and distinct relief also available under schedule 2, paragraph 7 CATCA 2003 and this relief permits the recipient, where certain conditions are fulfilled, to avail of the highest class threshold ("Group A") for CAT purposes which is ordinarily only available to a child of the disponer. If favourite nephew relief was denied to the Appellant, he would qualify for a lower class threshold ("Group B") which is ordinarily available to blood relatives of the disponer.
7. On the 5th October 2017, the Respondent wrote to the Appellant's agent and advised him that the Appellant's CAT affairs had been selected for review. The letter queried why the value submitted on the Appellant's CAT return used a lower value for the agricultural lands, €925,000, rather than the value which had been returned on the deceased's Inland Revenue Affidavit, €1,350,000. The Respondent's letter also requested details of the Appellant's agricultural and non-agricultural assets in order to ascertain if the agricultural relief claimed was valid and details of the amount of time the Appellant spent working on the farm in the preceding five years to determine if favourite nephew relief was validly claimed.
8. The Appellant's agent replied to this correspondence on the 16th October 2017 and stated:

"[The Appellant] inherited [the land] on the 10th January 2009, just four months after the greatest financial collapse ever known. The auctioneer in fairness had an

impossible task to place a value on the land when nothing was selling at any price. He was mindful also of part of the same lands which had been sold just two years earlier for around €18,000 an acre. He valued 170 acres at €7,500 per acre. It is my job to sign off on accounts which give a true and fair view of the state of affairs at a particular date. I am mindful that creditors and others rely on such. I wrote the value down to €5,000 an acre being the lower of cost and market value. It is for this reason there is a difference of €425,000. I am familiar with this land which has specific issues of access and workability. More important however is the fact that the value is ascertained from earning ability. Land in the region has a higher value in general as it is suitable for dairy farming, a higher reward business. In this case and which the auctioneer was not aware of there is an issue with wild deer and disease which renders dairy farming a high risk..."

9. The Appellant's agent also provided details of the Appellant's agricultural and non-agricultural assets. In response to the information requested regarding the Appellant's eligibility for favourite nephew relief he stated:-

"[The Appellant] was a boy of nine years when I first started work as an accountant for his late father. I also provided that service to his mother's brother... As such I got to know many things which I will take with me to the grave. I cannot divulge peoples' private business or intentions but what I can do is protect my client from Revenue putting the largest shovel into their [sic] resources. For five years and upwards [the deceased] was in a nursing home and I can confirm that for five years and upwards [the Appellant] worked on a full time basis and 15 hours per week and upwards as a son would for his father. There were sheep to be looked after and the property to be protected from those who might seek to obtain adverse possession."

10. On the 25th October 2017, the Appellant's agent sent further correspondence to the Respondent in support of the Appellant's claim for agricultural relief. For agricultural relief to be available to the Appellant it was necessary to prove that 80% or more of his assets qualified as "agricultural assets". The letter stated:

"the total inheritance was €1,369,572, the lands €1,350,000. The balance cash was €19,572. On 9 January 2009, [the Appellant] owned half his house with his wife. €25,000 and had 819 █████ shares worth €13 each or €10,647 and a van worth less than €1,000 and €7,713 in the credit union or €63,932 or 4.67% of the total i.e. over 95% in agricultural assets" Please find a copy of [the deceased's] accounts from year ended 5/4/2001, period ended 31/12/2001 and years 2002 to 2008 inclusive in euro. You will see the sheep were sold off to pay the nursing home bills over the years. If

there is anything else you need to satisfy Revenue that there is no liability in this case, I shall be pleased to oblige”.

11. The Respondent replied to the Appellant’s agent’s correspondence on the 13th November 2017 and stated:

“I note per the accounts submitted in respect of [the deceased] he had €2,000 worth of stock at 31/12/2008 but none were listed on the Inland Revenue Affidavit. You might please explain this. You might also submit a copy of the sheep census records for the years 2004 to 2008, the herd number and the tasing records for those years. You will note in my letter of the 19th October 2017, I had requested details of the work carried out by [the Appellant] on behalf of [the deceased]. I have not yet received this information so I would be obliged if you could submit it now. I also note that [the Appellant] did not have any farming income for 2009 or 2010 – you might explain how the land was being utilised during this time”.

12. The Appellant’s agent replied on to this correspondence on the 5th December 2017 and stated:

“The late [deceased’s] sister paid nursing home fees while her brother was in [a nursing home]... That is why her son [the Appellant] got the farm, in part a repayment of the debt, from brother to sister and by way of gift from mother to son. From 2005, [the Appellant] sold off the stock on the farm to pay the bills until eventually a field had to be sold. By the time of death there was no livestock on the farm...To walk the land each day alone would take more than two hours which is part of the daily routine of a farmer, stock and landowner, work necessary for the property beside boundary maintenance and the work mentioned above all carried out by [the Appellant].” In 2009 and 2010 [the Appellant] did not have the required resources to stock the lands and considered exclusive forestry alone. He did not receive the cheque payment from the solicitors on probate until after those dates”.

13. Following receipt of the above correspondence and absent receiving the requested information, the Respondent wrote to the Appellant’s agent on the 15th December 2017 and advised them that the Appellant was to be subject to a Revenue Audit. The letter explained that the focus of the audit included the Appellant’s claims for agricultural relief and favourite nephew relief in addition to the valuation discrepancy between the value of lands returned on the Inland Revenue Affidavit and as used in the Appellant’s claim for agricultural relief versus that returned by the agent in the Appellant’s CAT return.

14. The Appellant's agent replied to this correspondence on the 21st December 2017 and in addition to noting the Respondent's letter and contents of the 15th December stated "*That I have accepted the higher valuation for the lands. Indeed, I have already adjusted the figures in the 2016 et seq. to take account of same. That I agree the Inheritance Tax Return shall be amended to take account of [the higher valuation of the lands].*"
15. Subsequent correspondence ensued between the Appellant and the Respondent which cumulated in the following:
- (i) The Respondent accepted that the Appellant was entitled to agricultural relief.
 - (ii) The Respondent disputed that the Appellant had satisfied the necessary test to establish that he was entitled to favourite nephew relief.

In relation to the latter, the Respondent had suggested to the Appellant's agent that he contact the Department of Agriculture to seek information such as stock numbers for the sheep which may have been of assistance to the Appellant's contention that he worked more than 15 hours a week on the farm (which is a necessary minimum criteria for favourite nephew relief to apply and which is discussed in greater detail below). The Appellant's agent advised that he had done so but the Department had been unable to provide the requisite information.

16. As the Respondent was not satisfied that the Appellant was entitled to favourite nephew relief, they issued an amended notice of assessment to CAT on the 5th November 2018 which showed the sum of €21,788 payable by the Appellant in respect of the period 1st September 2008 to 31st August 2009.
17. On the 3rd December 2018, the Appellant who was not in agreement with the Notice of Assessment lodged an appeal with the Commission. The Appeal hearing was held on the 8th June 2022 with the Appellant in attendance represented by his agent ("the Appellant's agent").

Legislation and Guidelines

18. The following legislation is relevant to this appeal.

Section 26 CATCA 2003

(2) Subject to this Act, the market value of any property for the purposes of this Act is estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market on the date on which the property is to be valued in such

manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property.

(3) In estimating the market value of any property, the Commissioners shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time.

(4) The market value of any property shall be ascertained by the Commissioners in such manner and by such means as they think fit, and they may authorise a person to inspect any property and report to them the value of such property for the purposes of this Act, and the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

Section 30 CATCA 2003

(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.

(8) Notwithstanding anything contained in this section, the Commissioners may, in case of doubt, with the agreement in writing of the accountable person or that person's agent, determine the valuation date of the whole or any part of any taxable inheritance and the valuation date so determined is substituted for the valuation date which would otherwise be applicable by virtue of this section.

Section 46 CATCA 2003 – Delivery of returns (pre Finance Act 2010)

(2) Subject to paragraph (e) of section 21, any person who is primarily accountable for the payment of tax by virtue of section 45(1), or by virtue of paragraph (c) of section 16 shall, within 4 months after the relevant date referred to in subsection (5)—

(a) deliver to the Commissioners a full and true return of—

- (i) every gift in respect of which that person is so primarily accountable,*
- (ii) all the property comprised in such gift on the valuation date,*
- (iii) an estimate of the market value of such property on the valuation date, and*
- (iv) such particulars as may be relevant to the assessment of tax in respect of such gift;*

Section 49 CATCA 2003 – Assessment to tax

(2) If at any time it appears that for any reason an assessment was incorrect, the Commissioners may make a correcting assessment, which shall be substituted for the first-mentioned assessment.

(3) If at any time it appears that for any reason too little tax was assessed, the Commissioners may make an additional assessment.

(6) Any assessment, correcting assessment or additional assessment under this section may be made by the Commissioners from any return or additional return delivered under section 46 or from any other information in the possession of the Commissioners or from any one or more of these sources.

(7) The Commissioners, in making any assessment, correcting assessment or additional assessment, otherwise than from a return or an additional return which is satisfactory to them, shall make an assessment of such amount of tax as, to the best of their knowledge, information (including information received from a member of the Garda Síochána) and belief, ought to be charged, levied and paid.

(8) Nothing in section 46 shall preclude the Commissioners from making an assessment of tax, a correcting assessment of tax, or an additional assessment of tax, under the provisions of this section.

Section 51 CATCA 2003

(1) Tax shall be due and payable on the valuation date.

(2) Simple interest is payable, without deduction of income tax, on the tax arising by reason of section 15(1) or 20(1) from the valuation date to the date of payment of that tax, and the amount of that interest shall be determined in accordance with paragraph (c) of subsection (2).

CATCA 2003. SCHEDULE 2 - Computation of Tax – Part 1 – Preliminary

(7) (1) “relevant period” means 5 years ending on the date of the deposition...

(7) (2) *For the purpose of computing the tax payable on a gift or inheritance, the donee or successor is deemed to bear to the disponent the relationship of a child in any case where the donee or successor is a child of a brother, or a child of a sister, of the disponent and either—*

(a) the donee or successor has worked substantially on a fulltime basis for the disponent for the relevant period in carrying on, or in assisting in carrying on, the trade, business or profession of the disponent, and the gift or inheritance consists of property which was used in connection with that business, trade or profession; ...

(7)(3) *Without prejudice to the generality of subparagraph (2), a donee or successor is not deemed to be working substantially on a full-time basis for a disponent or a company unless—*

(a) where the gift or inheritance consists of property which was used in connection with the business, trade or profession of the disponent, the donee or successor works—

(i) more than 24 hours a week for the disponent, at a place where that business, trade or profession is carried on, or

(ii) more than 15 hours a week for the disponent, at a place where that business, trade or profession is carried on, and such business, trade or profession is carried on exclusively by the disponent, any spouse of the disponent, and the donee or successor.

Submissions

Appellant

19. The Appellant's agent submitted by virtue of the deceased bequeathing the farm to the Appellant that this was sufficient evidence to prove that the Appellant satisfied the "favourite nephew" test. His correspondence of the 28th April 2022 stated:

"[The Appellant's mother] beggared herself by paying nursing home costs for her beloved brother [the deceased] for many years and when the money ran out a field of the lands was sold". Of course it would be [her] son who would inherit the land. The deceased was seriously indebted to his sister. There is no clearer definition of favoured nephew."

20. The Appellant's agent conceded that there was no work carried out on the forestry element of the inherited lands, such as planting or felling of trees. However, he stated that it was evident a business was being carried on by, or on behalf of, the deceased for the five years

preceding the deceased's death by virtue of the fact that the financial statements which he submitted for those years (being 2004 to 2008 inclusive) showed ewe premiums of €126, €3,395, €3,465, €3,465 and €175 respectively being paid for those years. As these premiums were paid by the State (the Department of Agriculture), the Appellant's agent submitted "*there can be no stronger evidence than that of the State accepting a business is being carried on*". The Appellant's agent added that there were 100 ewes on the land in 2003 and as the deceased was then resident in a nursing home, it was the Appellant who looked after these sheep.

21. The Appellant's agent advised that as the Appellant only lived four miles away from the bequeathed lands, he frequented them on a regular basis. In relation to the work undertaken on the inherited lands he stated that the Appellant "*walked the lands*" to ensure they were in order and carried out essential repairs to broken fencing and such like.
22. The Appellant's agent stated that he was unable to get any assistance from the Department of Agriculture to support his claim that there were sheep on the lands for the periods 2004 to 2008. However, he stated that the documentation regarding the ewe premiums was proof in that regard and the only other evidence available was a receipt dated the 7th September 2004 for the sale of wool. A copy of this receipt was presented to the Commission and it contained a narrative to the effect that 515 lbs of wool had been sold by the deceased on that date. The Appellant's agent advised that he had done some research on the amount of wool on average that a sheep produces and this was 2.5lbs per sheep. He submitted that this was evidence of the 100 sheep being present on the inherited lands in 2004 since mathematically 515 lbs divided by 2.5 lbs per sheep roughly equated to 100 sheep being required to produce that much wool.
23. The Appellant's agent submitted that all other issues had "*melted away*" in the course of correspondence between the parties and the only net issue to be resolved was whether the Appellant was entitled to favourite nephew relief and whether the notice of assessment had issued out beyond the time permitted under section 955 (2) TCA 1997. The "other issues" the Appellant's agent referred to were the availability of agricultural relief (which was granted by the Respondent), and the value to be placed on the lands (which the Appellant's agent conceded was €1,350,000).
24. In summary, the Appellant's agent submitted that it was "obvious" that the Appellant was the deceased's favourite nephew as sufficient proof had been afforded to the Respondent and the Commission to determine that the Appellant satisfied the necessary conditions for favourite nephew relief, that the Appellant was entitled to the benefit of that relief, and as a result the amount of CAT payable by the Appellant was nil.

Respondent

25. The Respondent stated that while they considered the costs and care afforded by the Appellant's mother to the deceased were not relevant to the qualification of the Appellant as a favourite nephew, they conceded that the Appellant met that definition. However, they stated this qualification was not in itself sufficient for the purpose of the relief afforded under the CATCA and that insufficient evidence had been presented to them to satisfy the requirement under the Act that the Appellant had worked a minimum number of fifteen hours per week for the five years preceding the passing of the deceased.
26. The Respondent stated that a review of the deceased's financial statements for the five years preceding his death did not support the Appellant's agent's contention that there were 100 sheep or indeed any sheep on the inherited lands. They formed this view as the financial statements for the calendar years ended 2006, 2007 and 2008 did not record the sale of either sheep or wool. In addition, they stated that while the accounts submitted on behalf of the deceased for the year 2002 showed a value of closing stock in the sum of €14,000, that this figure was systematically reduced by €2,000 per annum for the following years 2003 to 2008 without any corresponding sale or other explanation being afforded for the reduction. The Respondent also stated that despite the financial statements for the year ended 31st December 2008 showing a closing stock figure for sheep in the sum of €2,000, the schedule of assets at the deceased's date of death some ten days later on the 10th January 2009 did not record any figure for sheep.
27. The Respondent further submitted that as the only expense entered in the deceased's financial statements for the years 2004 to 2008 inclusive was a generic figure of €1,000 per year for "expenses" that this did not support the Appellant's agent's submissions that any or any significant works were undertaken on the lands by the deceased or the Appellant.
28. The Respondent advised that they contacted the Department of Agriculture in order to assist the Appellant get information such as sheep census records, number of tags purchased, herd number etc. This was the type of evidence the Respondent required to substantiate the Appellant's claim that he worked upwards of 15 hours per week on the inherited lands. The Respondent wrote to the Appellant's agent on the 27th August 2019 and advised him that if a copy of the grant of probate was supplied to a named official in the Department of Agriculture at a provided address that contact would provide the Appellant with a copy of the information which would be of assistance to the Appellant's claim. The Respondent advised that the only reply to this offer of assistance was a letter

from the Appellant's agent on the 19th September 2019 which stated that if the Respondent did not agree that sufficient evidence had been presented by the Appellant to show that the requisite 15 hours per week were worked, proceedings would issue seeking damages from the Respondent.

29. The Respondent stated the fact ewe premiums were paid to the deceased did not necessarily mean that there were sheep on the lands during the years in question (2004-2008 inclusive). They advised that they formed this view having consulted a document entitled "The Department of Agriculture – The Single Payment Scheme – An Explanatory Guide May 2004". They advised that as this guide advised that there was no minimum density stock requirement required for payments to be made under the scheme and as the scheme participants are rarely audited (the guide stated that less than 5% of grant recipients are audited annually) then it was possible to get grant payments under the scheme without having either any sheep present on the land or any business conducted on the lands. The Respondent further advised that the guide stipulated that since 2005 there was no requirement to keep any stock on the lands with grants being paid based upon the number of animals or number of hectares and that the only requirement for grants to be paid out was that the lands were kept in good agricultural and environmental condition.
30. The Respondent was of the view that a business of forestry existed but there was insufficient evidence provided of the Appellant having worked substantially on a full time basis in carrying on or assisting in the carrying on of such business for the five years ending on the date of death of the deceased.
31. The Respondent stated that the due date for submission of the inheritance tax return was the 10th May 2009 (as the inheritance was received pre Finance Act 2010 – which came into effect on 14/6/2010, the CAT return was due to be lodged within four months of the "valuation date") but was not lodged with them until the 28th September 2017. The Respondent submitted that as the Appellant had wrongly claimed favourite nephew relief on that CAT return, it was completed in a negligent manner, and the provisions of section 956 (1) (c) TCA 1997 permitted them to make an assessment outside the normal four year period ordinarily permitted and as such the assessment was valid.
32. In summary, the Respondent stated that it had asked the Appellant's agent for details of the work carried out by the Appellant on the bequeathed lands in the five year's preceding the passing of the deceased from the date of their initial correspondence on the 5th October 2017 right through to the day of the hearing of the appeal and the Appellant had failed to produce satisfactory evidence in this regard. They submitted that as favourite nephew

relief requires the Appellant to provide such evidence and as he had not, the relief afforded under the favourite nephew provisions of the Act should be denied and the assessment upheld.

Evidence Presented to the Commission

33. At the conclusion of the hearing, the Commissioner requested various documentation which while referred to during the hearing was not available for inspection. The following documentation was subsequently received from the Appellant's agent by email on the 10th June 2020.

33.1. A letter from the Appellant's agent to the Department of Agriculture dated 21st January 2018 which requested a stock number for the herd of the deceased. This correspondence was not addressed to any particular individual.

33.2. A letter from Appellant's agent to the deceased's solicitors seeking a letter of authorisation requesting them to provide a letter of authorisation addressed to the Department of Agriculture to request documentation be released to them as tax agents to assist. No reply from the solicitors was produced to the Commission.

33.3. A letter from the Appellant's agent addressed to the Respondent dated 2nd June 2022 enclosing 23 payments from the Department of Agriculture. These payments related to the years 2004 to 2008, were for various sums and were labelled "Department of Agriculture and Food. E.U. Single Payment Scheme".

Material Facts

34. The Commissioner finds the following material facts:-

34.1. The deceased died on the 10th January 2019.

34.2. The deceased bequeathed the Appellant 240 acres which consisted of 70 acres of forestry lands and 170 acres of agricultural lands. These lands were valued at the date of death of the deceased at €1,350,000 by an auctioneer.

34.3. Probate was granted by the High Court in respect of the deceased's Estate on the 23rd November 2010. The schedule of assets listed the inherited lands at €1,350,000 but did not show any valuation for livestock.

34.4. The deceased's financial statements for the year ended 31st December 2008 showed a closing stock valuation for sheep of €2,000.

34.5. On the 28th September 2017, the Appellant's agent lodged the Appellant's capital acquisition tax return. On this return, the Appellant elected the deceased's date

of death as the valuation date and returned a value in respect of the inherited lands in the sum of €925,000.

34.6. The deceased was resident in a nursing home for at least the period covering five years before the date of his death.

34.7. A notice of assessment to CAT issued by the Respondent to the Appellant covering the period 1st September 2008 to 31st August 2009 in the sum of €21,788 on the 5th November 2018.

Analysis

35. The central issues to be determined in this appeal are whether the notice of assessment which was issued by the Respondent on the 5th November 2018 was issued within the timeframe prescribed by statute and whether the Appellant was entitled to avail of favourite nephew relief under the provisions of the CATCA 2003.

36. In appeals before the Commission, the burden of proof rests with the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at paragraph 22 Charleton J. stated:

'The burden of proof in this appeals process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable'

37. Section 51 CATCA 2003 requires that CAT shall be due and payable on the "valuation date". The valuation date was agreed between the Appellant and the Respondent as the date of death of the deceased and this accords with the provisions of section 30 CATCA 2003. Section 46 CATCA required the Appellant to file a CAT return within 4 months of the valuation date. As the deceased died on the 10th January 2009, this return should have been lodged on or before the 10th May 2009 but the return was not lodged by the Appellant's agent until the 28th September 2017.

38. Section 46 CATCA 2003 required the Appellant to include within the submitted CAT return a "full and true" return of the inherited lands (and other bequeathed assets) with an estimate of the market value of those assets. As opposed to using the professional valuation obtained for the inherited lands of €1,350,000, the Appellant's agent chose instead to use his own different valuation in the lesser sum of €925,000. The Appellant subsequently agreed with the Respondent that he should not have reduced the value from

that of the professional valuation obtained and hence the return submitted by the Appellant's agent did not constitute a "*full and true*" return.

39. Section 49 (7) CATCA permits the Respondent "at any time it appears that for any reason an assessment was incorrect, the Commissioners may make a correcting assessment, which shall be substituted for the first-mentioned assessment."

40. The Commissioner is satisfied that there is no inherent ambiguity in the statutory wording used per section 49(7) CATCA 2003. It is clear from section 49(7) that the legislature intended that the Respondent be authorised at any time to make a correcting assessment where they are not satisfied for any reason that the original assessment or return was correctly issued. As the Appellant's original CAT return was submitted several years after it was due to be lodged and contained an erroneous valuation, this means that the Respondent's notice of assessment which issued on the 5th November 2018 issued in accordance with the legislation, is not statute barred and is valid.

41. The second matter to be considered by the Commissioner is whether the Appellant satisfies the requirements of section 2 CATCA 2003, "favourite nephew relief". It was noted by the Commissioner during the course of the appeal that both the Appellant and the Respondent were of the view that in order to demonstrate eligibility for this relief it was necessary that the Appellant prove that he was required to work on the inherited lands for a period of 15 hours in each of the weeks in the five years preceding the death of the deceased. This is factually incorrect and this misunderstanding stems from schedule 2, section 7 (ii) which states:

"...more than 15 hours a week for the disponent, at a place where that business, trade or profession is carried on, and such business, trade or profession is carried on exclusively by the disponent, any spouse of the disponent, and the donee or successor".

As is evident from the above, in order for the provisions of schedule 2, section 7 (ii) to be applicable, it is required that the deceased was required to have carried on the business exclusively with the Appellant. As this was not possible by virtue of the Appellant's own evidence in which he stated that the deceased was in a nursing home in the years before his death, it is clear that this provision is not applicable to the instant appeal as the now deceased then resident in a nursing home would have been unable to look after the inherited lands.

42. Where the requirements of schedule 2, section 7 (ii) CATCA 2003 are not met, as in this instance, subsection 7 (i) of that schedule imposes a higher working week of 24 hours to be fulfilled in order for the Appellant to be deemed eligible for the relief.

43. In considering if the Appellant fulfilled the necessary criteria to be eligible for favourite nephew relief i.e. that he worked 24 hours or more per week in each of the weeks for a period of five years preceding the death of the deceased, the meaning of “worked” needs to be considered. In *AE V Revenue Commissioners* (1984) ILRM 301, it was held that:

- (a) “substantially full-time” could be construed to imply “the continued presence of a niece or nephew on a day to day basis whereby their labour (including expertise) is put at the disposal of the disponer whereby material benefit is conferred or it attempted to be conferred on the disponer’s business”;
- (b) the attention given to the deceased’s lands was necessary to be proved in order to establish that a farming business was being carried on;
- (c) decision making by a dominant person regarding the management of the lands constituted working on the lands;
- (d) it was not essential for a nephew or niece claiming under the relevant provision to show that he or she had taken over the entire running of the business.

44. Accordingly, it is not necessary to show that the Appellant took over the entire running of the inherited lands for the working requirement to be fulfilled but it is of necessity to show that the Appellant was present on the inherited lands, that his labour was used in maintaining those lands, that material benefit was conferred on the deceased’s lands or that dominant decision making regarding the management of the lands was exercised by the Appellant.

45. The following sales information was extracted by the Commission from the deceased’s financial statements for the five years preceding his death.

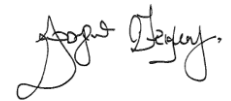
		2004	2005	2006	2007	2008
Sales	Sheep & Wool	12,230	4,399	0	0	0
	Premia	126	3,395	3,465	3,465	175

In noting the lack of sales for the year’s ended 2006 to 2008 inclusive, the Commissioner is of the view that material benefit did not accrue to the deceased in those years. In addition, considering the only expense listed in the financial statements for the years 2004 to 2008 was “other expenses” of €1,000 per annum, the Commissioner is not satisfied that this expenditure, by virtue of the quantum, would be sufficient to justify the cost of either having sheep on the lands or maintaining the lands as alleged by the Appellant in his evidence.

46. In his evidence, the Appellant's agent stated that the forestry aspect of the inherited lands did not require any attention from the Appellant and as such would not have contributed towards the 24 hour working week requirement. This results in the evidential burden only being capable of being discharged by the Appellant on the basis that he spent 24 hours or more per week for each week of the five years preceding the deceased's passing by looking after the sheep on the lands, which the Commissioner has already discounted.
47. In forming the view that the Appellant did not spend the requisite time looking after the sheep on the inherited lands, the Commissioner also considered the Appellant's agent's failure to engage with the Department of Agriculture to obtain any of the evidence suggested by the Respondent. Furthermore, the Commissioner has established that the average amount of wool produced by a sheep is on average 2 to 30 pounds per annum (*source: www.sheep101.info>wool quoted as an educational website on sheep and farmandanimals.com which is a home-style blog webpage*) and not the 2.5lbs per sheep alleged by the Appellant's agent in evidence.
48. Accordingly, the Commissioner determines that the Appellant has not discharged the necessary burden of proof to establish his entitlement to favourite nephew relief as provided under Schedule 2, subsection 7 (1) CATCA 2003. As a result the Respondent's assessment to CAT issued to the Appellant on the 5th November 2018 for the period 1st September 2008 to 31st August 2009 in the sum of €21,788 must stand.

Determination

49. The Commissioner determines that the assessment to CAT in the sum of €21,788 stands as the Appellant has not discharged the necessary burden of proof to establish entitlement to favourite nephew relief in accordance with schedule 2, subsection 7 (1) CATCA 2003. Therefore, the appeal is denied and the assessment is upheld.
50. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.
51. The appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
20 June 2022

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997