



49TACD2022

Between

██

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought on behalf of the estate of ██ (the “Appellant”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) against a Notice of Assessment raised by the Revenue Commissioners (“the Respondent”). This matter relates to a benefit, in the form of an inheritance, received by the Appellant. The appeal is being brought by the estate of the Appellant.
2. In accordance with the provisions of section 949U TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

**Background**

3. On 16 August 2010, the Appellant received a benefit of €1,293,825 from the estate of her late brother in ██████████. On 25 February 2011, the Grant of Probate issued in the estate in ██████████. The first payment was received by the Appellant on 3 November 2011 and the second payment on 12 January 2012.

4. In May 2012, the Appellant filed a Form IT38 Inheritance Tax Return. On 29 May 2012, the Capital Acquisitions Tax (CAT) liability of €313,086 was discharged. The valuation date specified on the return was 25 February 2011, which the Appellant's estate now contend was incorrectly stated.
5. The Appellant's estate contend that no surcharge is payable, as the valuation date for the purposes of the inheritance is 2 September 2011, the date the executors received confirmation of the Appellant's identify.
6. The Respondent contends that the valuation date for the purposes of the inheritance is 25 August 2011, the date the inheritance was available to be retained by the Appellant. The Respondent submits that this valuation date resulted in a return and tax being due on or before 31 October 2011, by reference to section 46(2A) of the Capital Acquisitions Tax Consolidation Act 2003 ("CATCA 2003").
7. On 30 May 2012, a Notice of Amended Assessment issued to the Appellant, which included a surcharge of €31,308 and on 3 August 2016, the Appellant duly appealed to the Commission.

### **Legislation**

8. The legislation applicable to this appeal is contained in the Capital Acquisitions Tax Consolidation Act 2003 ("CATCA 2003").
9. According to sections 30(4) and 30(8), the valuation date for tax purposes provides:

*(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*

10. Section 46(2A)(a) of CATCA 2003, Delivery of returns provides:

*(2A) for the purposes of subsection (2) (other than in the case of an inheritance to which section 15 or 20 applies), where the relevant date occurs—*

*(a) in the period from 1 January to 31 August in any year, tax shall be paid and a return shall be delivered on or before 31 October in that year, and*

*(b) in the period from 1 September to 31 December in any year, tax shall be paid and a return shall be delivered on or before 31 October in the following year.*

11. Section 53A(3)(b) of CATCA 2003, Surcharge for late returns provides:

*(3) Where a person fails to deliver a return on or before the specified return date, any amount of tax which would have been payable if such a return had been delivered shall be increased by an amount (in this section referred to as “the surcharge”) equal to—*

*(b) 10 per cent of the amount of tax, subject to a maximum increased amount of €63,485, where the return is not delivered before the expiry of 2 months from the specified return date.*

12. Section 51 of CATCA 2003, Payment of tax and interest on tax provides:

*(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).*

## **Submissions**

### *Appellant*

13. The Appellant's estate submit that on 25 February 2011, a Grant of Probate issued in the estate of the Appellant's late brother in [REDACTED]. The Appellant's estate submit that the granting of probate in [REDACTED] does not equate to the granting of probate in Ireland. The Appellant's estate submit that in the state of [REDACTED], there is no requirement to include the names of beneficiaries when applying for probate. However in Ireland, when making an application for a grant of probate, there is an obligation to formally identify both the deceased person and beneficiaries by including name(s), address(s), and Personal

Public Service (PPS) number(s). In the case of each beneficiary, the value of the inheritance receivable also must be included. The Appellant's estate state that, as a result, in Ireland, the beneficiary and the value of the benefit is known on the date the application is accepted, but nowhere in an [REDACTED] probate application is the Appellant identified as a beneficiary or the inheritance from the estate recognised. The Appellant's estate submit a copy form CA24, to illustrate the information required in this jurisdiction.

14. The Appellant's estate submit that whilst the date of the grant of probate may have been 25 February 2011, there were conditions precedent to the actual granting of the benefit. The Appellant's estate submit:

*"The two requirements which are most pertinent to the Appellant's case are as follows:*

*1. The "Testator Family Maintenance" or "TFM" period is to be observed. In [REDACTED] following the granting of probate, there is a 6 month period within which persons who wish to make a claim against the estate for greater provision ("challenge the will") are entitled to do so. 2. The identity of the beneficiaries is to be established".*

15. The Appellant's estate contend that it was not until 2 September 2011, that both conditions were met. The first requirement of the [REDACTED] (executors of the estate in [REDACTED]) was met on 25 August, 2011 and the second on 2 September, 2011, thus the valuation date should be 2 September 2011, not 25 August 2011 as contended by the Respondent. The Appellant's estate submit that the valuation date arises only when the point is reached that a benefit and a beneficiary can be identified and allocated. The Appellant's estate state that *"If there is uncertainty regarding (a) whether or not the beneficiary will take the benefit, or (b) how much of the benefit will be available, this will displace any existing valuation date. The [REDACTED], would only commence the distribution of the Appellant's inheritance once her identity had been formally recognised, which took place on 2 September 2011".*

16. The Appellant's estate reference correspondence between the Appellant's representatives and the [REDACTED] during 2010 and 2011, and state that *"the first that the appellant and her solicitor knew of the outstanding Declaration was when they received the email dated 12, August 2011 requesting the Declaration. The Declaration was sent back to [REDACTED] by ordinary post on 22, August 2011 and received by [REDACTED] on 2 September 2011"* and *"it is not reasonable to suggest that the delay which ensued in returning the Declaration was attributable to the Appellant".*

17. The position maintained by the Appellant's estate is that section 30(8) of CATCA 2003 provides for situations where another date might be appropriate and that *"the rules regarding a valuation date are flexible and deliberately so, as they must take into account*

*every eventuality in the administration of an estate*". Thus the use of the date of the grant of probate in [REDACTED], namely 25 February 2011, as the valuation date for the benefit under section 30(4) of the CATCA 2003 was not correct, as the processes in each jurisdiction are not equivalent. The Appellant's estate submit that *"the earliest date applicable under section 30(4) of the CATCA 2003 is subsection (a) which is 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..."*.

18. Moreover, the Appellant's estate submit that whilst Form IT38 stated an incorrect valuation date of 25 February 2011, the date of the grant of probate, it is not permissible for the Respondent to adopt a flexible approach to the first requirement, namely the 6 month rule, but fail to take into consideration the second requirement, that the beneficiary be identified. The Appellant's estate contend that section 30(8) of CATCA 2003 was used in relation to the first requirement, to provide for a valuation date of 25 August 2011, but not the second, and that this approach is inconsistent on the part of the Respondent.
19. The position promulgated by the Appellant's estate is that section 30(8) of CATCA 2003 *"allows for valuation date flexibility in cases such as this where doubt is present"*. The Appellant's estate refer to a number of authorities to support a movable valuation date namely, *Lord Advocate v Wotherspoon's Trustees* (1930) SLT82, *Gleeson V Feehan* 1997 1 ILRM 522, *Stephen Thomas Strong V Maureen Elizabeth Holms, Richard Holms and Mark Holms* (2010) IEHC70 unreported.

#### *Respondent*

20. The Respondent submits that on 30 May 2012, following the Appellant's submission of Form IT38 Inheritance Tax Return in May 2012 and the discharge of Capital Acquisitions Tax (CAT) liability of €313,086 on 29 May 2012, it issued a Notice of Amended Assessment, including a surcharge of €31,308.
21. The Respondent's position is that section 46(2A)(a) of the CATCA 2003 provides that where the relevant date occurs in the period to 31 August 2011, tax shall be paid and a return shall be delivered on or before 31 October in that year. In this case, as the valuation date specified on the Form IT38 filed by the Appellant was 25 February 2011, the due date for the return and payment of tax was 2011, not 2012.
22. Further, the Respondent's position is that section 53A(3)(b) of the CATCA 2003 provides that *"where a person fails to deliver a return on or before the specified return date, any amount of tax which would have been payable if such a return had been delivered shall be increased by an amount (in this section referred to as 'the surcharge') equal to 10 per*

cent of the amount of tax... where the return is not delivered before the expiry of 2 months from the specified return date". Therefore, as the Appellant's return was filed late, a surcharge in accordance with section 53A(3)(b) of the CATCA 2003 was applied.

23. The Respondent submits that section 30(4) CATCA 2003 outlines *that the valuation date of a taxable inheritance is the earliest of a number of dates, as follows:*

*'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 inheritances 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'.*

24. The Respondent makes reference to correspondence received from the Appellant's representatives enclosing correspondence from the [REDACTED], outlining that there is a "legal waiting period of 6 months in which a person may make a claim seeking a share of the deceased estate" and for that reason an estate is not distributed until the expiry of that period. Reference was made to the date of 25 August 2011 being the expiry date of that period.

25. The Respondent accepts that the Appellant's Form IT38 specifically stated that the valuation date was 25 February 2011 (date of the Grant of Probate) and whilst it is in agreement with this date, it is now accepted that "as there is a requirement under [REDACTED] law which prohibits the distribution of an estate until the legal waiting period of 6 months has expired..... the valuation date be extended to 25 August 2011".

26. Nevertheless, the Respondent does not accept that the valuation date relates to the identification of the beneficiary. The Respondent contends that this is merely an administrative requirement of the [REDACTED] and accordingly, the date of 2 September 2011 cannot be accepted as the valuation date for the purposes of the inheritance.

27. In summary, the Respondent contends that the inheritance was available to be retained on 25 August 2011, and that this is the basis upon which the valuation date was arrived at. Consequently, the tax was due to be paid and return submitted on or before 31 October 2011, by reference to section 46(2A)(a) of the CATCA 2003.

## Material Findings of Fact

28. The Commissioner having reviewed the documentation provided makes the following material findings of fact:

- a. On 16 August 2010, the Appellant received a benefit of €1,293,825 from the estate of her late brother in [REDACTED] attracting a liability for CAT.
- b. On 25 February 2011, the Grant of Probate issued in the estate in [REDACTED]. The date of 25 February 2011, was incorrectly stated as the valuation date when the Appellant filed a Form IT38 Inheritance Tax Return, in May 2012. This is now accepted by both parties.
- c. The Capital Acquisitions Tax (CAT) liability of €313,086 was discharged in May 2012, rendering it a late return and attracting interest and penalties having regard to the valuation date of 25 February 2011.
- d. The notice of amended assessment that issued on 30 May 2012, is therefore, correct having regard to the valuation date of 25 February 2011.
- e. A 6 month waiting period imposed in [REDACTED], until a benefit can be distributed, expired on 25 August 2011.
- f. On 2 September 2011, a declaration of identity, provided by the Appellant, was received by the [REDACTED] in [REDACTED].

## Analysis

29. In coming to a decision, the Commissioner has considered in detail, the written submissions of both parties to the appeal and the statutory requirements of the CATCA 2003. The net issue in this appeal is the applicable valuation date for the purposes of an inheritance that the Appellant received and thus, the period in which the tax and return was to be paid and delivered. Compliance with CAT is firmly centred on the concept of the “valuation date”, which determines when the return needs to be filed and the CAT paid. The rules on when a valuation date falls are wide-ranging and flexible, so that they can take account of all the possible permutations and combinations in relation to a gift or inheritance. The issue is how to identify when the personal representative or successor is “*entitled to retain ... the inheritance for the benefit of the successor ...*”

30. The Commissioner notes on 29 May 2012, a CAT liability of €313,086 was discharged in respect of the benefit. Moreover, the Commissioner notes that it is now accepted by the Respondent that whilst the date of the Grant of Probate was 25 February 2011, due to a 6

month waiting period imposed in [REDACTED] until a benefit can be distributed, the earliest date that the Appellant was entitled to retain the benefit was 25 August 2011.

31. However, there remains disagreement as to the period in which the tax and return should have been made by the Appellant. The Respondent is firmly of the view that the valuation date for the purposes of the inheritance is 25 August 2011, and it has relied on its powers under section 30(8) of the CATCA 2003 to substitute this date, for the earlier date. Notwithstanding this, the Appellant's estate also remains firmly of the view that the later date of 2 September 2011, should be the valuation date for the purposes of the inheritance, in circumstances where the benefit could not be retained until a declaration of identity in respect of the Appellant was received by the [REDACTED] in [REDACTED]. In this regard, the Commissioner notes the submission put forward by the Appellant's estate that a number of delays took place in respect of the declaration of identity and thus the Appellant was not entitled to the benefit until this was resolved.

32. Having carefully considered the submissions made in the course of the appeal, the Commissioner is satisfied that the Respondent's reliance on the valuation date of 25 August 2011, for the purposes of the inheritance, is correct. Section 30(4) of CATCA 2003, clearly envisages the valuation date being the earliest date a person is entitled to retain the subject matter of the inheritance. This is different to the distribution of the benefit. However, the Commissioner is satisfied that the words in section 30(4) of the CATCA 2003 are plain and their meaning self-evident.

33. In the recent judgment in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552, McDonald J., from his review of the most up to date jurisprudence, summarised the fundamental principles of statutory interpretation at paragraph 74

*"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:*



*“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

*“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*

34. The kernel of this appeal relates to the date upon which the Appellant was entitled to retain the subject matter of the inheritance for her benefit. This then determines the correct period for the purposes of the payment of liability and submission of a return. The valuation date arises because the estate reaches the point when a beneficiary's benefit can be identified and allocated. In light of the foregoing principles, the Commissioner cannot accept the argument by the Appellant's estate that the date of valuation is 2 September 2011, as the value of the benefit was known and capable of being retained on 25 August 2011, the earliest date provided for, in accordance with section 30(4) of the CATCA 2003. Whilst there may well have been a declaration of identity outstanding in respect of the Appellant, the Commissioner is satisfied that this was akin to an administrative requirement for the distribution of the benefit and as such, did not relate to the Appellant's entitlement to retain the benefit. The Appellant was entitled to retain the benefit on 25 August 2011, so the act of identifying the benefit to be taken was complete, even though some technicalities were to be fulfilled, before actual delivery of the benefit.
35. The Commissioner has considered the authorities cited by the Appellant's estate to support a movable valuation date namely, *Lord Advocate v Wotherspoon's Trustees* (1930) SLT82, *Gleeson V Feehan* 1997 1 ILRM 522, *Stephen Thomas Strong V Maureen Elizabeth Holms, Richard Holms and Mark Holms* (2010) IEHC70 unreported.
36. In *Lord Advocate v Wotherspoon's Trustees* (1930) SLT82, the Court held that
- "Retainer is something different from the holding or retention of a trust estate by the trustees in order to carry out the trust purposes. It must be a retainer in the right and for the benefit of the legatee - something of an analogous character to actual delivery or payment. It is an essential feature of the retainer that the legatee should be entitled either to demand payment or delivery or at all events should have the beneficial enjoyment of the legacy through the hands of the trustees. An obvious case of retainer is the holding by an executor of a legacy on account of a personal disability on the part of the legatee to give a discharge therefor."*
37. In *Gleeson v Feehan* 1997 1 ILRM 522, the Court held that
- "until such time as the extent of the residuary estate of the deceased person has been ascertained and the executor is in a position to either vest the proceeds of sales of the residuary estate in the residuary legatee..."
38. However, in *Stephen Thomas Strong V Maureen Elizabeth Holms, Richard Holms and Mark Holms* (2010) IEHC70 unreported, the Commissioner notes that the Court was specifically considering Section 111 of the Succession Act 1965, a spouse's legal right

share and the valuation date for the purposes of the value of land, as distinguished from the valuation date for the purposes of CAT. Having regard to the decision in *Lord Advocate v Wotherspoon's Trustees* and *Gleeson v Feehan*, the Commissioner is of the view that in fact, both decisions support the contention that the appropriate valuation date for the purposes of the benefit is the date upon which the inheritance is held for the benefit of the successor, as opposed to the distribution of the benefit. In this case, that date is 25 August 2011, not 2 September 2011.

39. The Commissioner is cognisant that the surcharge and penalties imposed by the Respondent relate to a very short period of only a number of days, in terms of the differing years in which the payment and return was to be made. Nevertheless, the scope of the jurisdiction of an Appeal Commissioner as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be.

40. In an appeal before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments to tax are incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

*“The burden of proof in this appeal 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”.*

41. Accordingly, the onus in this appeal rests on the Appellant's estate and the Appellant's estate in this appeal has not shown that the relevant tax is not payable.

### **Determination**

42. The legislation in this case imposes a clear and unambiguous system to determine a valuation date in respect of an inheritance and the periods upon which tax shall be paid and a return delivered.

43. Accordingly, for the reasons set out above the Commissioner finds that the assessment by the Respondent should stand and consequently, the appeal is not upheld.

44. This appeal is hereby determined in accordance with the statutory provisions of the TCA.

This determination contains full findings of fact and reason 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.



Claire Millrine  
Appeal Commissioner  
22 March 2022