



70TACD2022

Between

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**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**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 8<sup>th</sup> May 2018.
2. The assessment covers the period 1<sup>st</sup> September 2013 to 31<sup>st</sup> August 2014 and the total CAT due on the assessment amounts to €43,842. The Appellant is appealing the assessment in accordance with section 67 of the Capital Acquisitions Tax Consolidation Act 2003 (“CATCA 2003”).

**Background**

3. ██████████ (“the deceased”), a bachelor, died on the 25<sup>th</sup> April 2013. The deceased’s assets and liabilities (“Estate”) included agricultural assets valued at €851,500 and non-agricultural assets (bank accounts, listed shares, a motor vehicle and life policy proceeds valued at €397,076). The agricultural assets consisted of farmlands, farm buildings and farm machinery.
4. The liabilities attaching to the Estate included funeral, legal and testamentary expenses amounting to €54,764. The asset and liability description, breakdown and values of the assets and liabilities are not in dispute between the Appellant and the Respondent.
5. The deceased’s will directed “... *subject to the payment of all my just debts, funeral and testamentary expenses, I give devise and bequeath all my property, real or personal, in equal shares to and between my brother ██████████ and my sisters ██████████* i.e.

*three equal shares...*". The effect of this clause of the will was that after payment of the deceased's debts, funeral and testamentary expenses, the balance of the assets were to be split equally between the deceased's three siblings.

6. One of the siblings, the deceased's brother [REDACTED], predeceased the deceased and died a bachelor without issue in January 1994. Under the provisions of section 91 of the Succession Act 1965, the entire Estate passed to the deceased's other siblings, his sister the Appellant and his other sister [REDACTED] in equal shares.
7. [REDACTED] did not wish to inherit her share of the Estate and wished to disclaim her interest in the Estate for a payment of €150,000. In order to do this, she effected a Disclaimer on the 21<sup>st</sup> August 2013 and received the amount of €150,000 (the "disclaimer amount").
8. A CAT return was submitted in respect of this benefit for [REDACTED] by her tax agent ("Agent") and the resulting CAT liability was paid. On the return, her Agent recorded the benefit as having being received from the deceased.
9. Subsequently, the same Agent lodged a CAT return for the Appellant and included in that return the entire value of the property consisting of the agricultural assets and the residue of the Estate after the deduction of the disclaimer amount paid to [REDACTED] and the funeral, legal and testamentary expenses of the deceased.
10. The Appellant qualified as a "farmer" (meaning more than 80% of her assets were deemed agricultural assets) within the provisions of section 89 CATCA 2003 and claimed agricultural relief on the value of the agricultural assets bequeathed to her from the deceased. Agricultural relief provided the benefit of discounting down the value of the agricultural assets bequeathed to her by 90% of their value for the purpose of assessment to CAT.
11. In completing the CAT Return for the Appellant, her Agent listed "Liabilities, Costs & Expenses" as nil on the return, returned the agricultural assets at full value (before reducing them by the 90% relief) and returned "other personality" as €185,286. "Other personality" in this context is the term used on the CAT return for non-agricultural assets and in this instance referred to the value of the bank accounts, listed shares, motor vehicle and the proceeds of the life assurance policies.
12. In calculating the figure for "other personality" the Agent deducted both the amount of the disclaimer and the funeral, legal and testamentary expenses of the deceased from the value of the bequeathed non-agricultural assets before entering the net figure on the CAT return.
13. The Respondent disputed this treatment and submitted that the liabilities, costs and expenses of the deceased (which they argued included both the disclaimer amount and the funeral, legal and testamentary expenses of the deceased) should be divided *pro rata* between the agricultural and non-agricultural assets. The effect of this treatment was that the value of the liabilities, costs and expenses relating to non-agricultural benefits would be reduced and the portion relating to agricultural assets would be discounted down by 90% in accordance with section 89 (2) (ii) CATCA 2003. The net effect of reducing and discounting down the liabilities, costs and expenses resulted in the additional CAT liability arising for the Appellant.
14. Subsequent correspondence between the Appellant's Agent and the Respondent failed to reach an agreement and the Respondent preferring their treatment issued a Notice of Amended Assessment to CAT on the 8<sup>th</sup> May 2018 seeking the additional sum of €43,842, from the Appellant.

15. The Appellant was dissatisfied with this additional assessment and hence appealed the matter to the Commission on the 22<sup>nd</sup> May 2018. The appeal hearing was heard on 8<sup>th</sup> April 2022.

### **Documentation Presented before the Hearing and Evidence at the Hearing**

16. The Agent who presented the Appeal on behalf of the Appellant prepared and submitted the CAT returns for both the Appellant and her sister. In advance of the hearing, the following documentation was presented to the Commission and the Respondent by the Agent:

- The deceased's will.
- The Inland Revenue Affidavit (since the 14<sup>th</sup> of September 2020, called a "Statement of Affairs (Probate) Form S.A.2) of the deceased.
- The CAT tax returns for the Appellant and her sister.
- The Disclaimer Deed signed by the Respondent's sister.
- Copy of a cheque from the Executor's bank account recording the payment of the Appellant's sister's CAT liability on the disclaimer.
- Copy of a cheque from the Executor's bank account for the balance of the disclaimer amount payable to the Appellant's sister after deducting the CAT payable on the disclaimer.
- Copies of the Executor bank statements confirming encashment of the Appellant's sister's CAT payment and the balance of the disclaimer amount.

17. The following evidence was agreed during the hearing:

- As the Appellant's sister was bequeathed an equal half share of the entire Estate, she would not have been entitled to differentiate between property which she was fully disclaiming and property which she was disclaiming for the payment of the disclaimer amount under various provisions of the Succession Act 1965.
- This was reflected in the Deed of Disclaimer executed by the Appellant's sister which stated:

*"I hereby irrevocably disclaim absolutely the entire benefit of the bequest and I further hereby irrevocably disclaim absolutely all my right to the said intestate share in consideration for the sum of one hundred and fifty thousand euro".*
- The disclaimer consideration was paid to the Appellant's sister from the deceased's executor bank account and was not paid by the Appellant in a "personal capacity".

### **Legislation and Guidelines**

18. The following Legislation and Guidelines are relevant to this appeal:

#### Section 10 CATCA 2003

*"(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.*

(3) For the purposes of section 11 (1) (b) and 11(2) (c), the sum referred to in section 5 (2) (b) is deemed not to be situate in the State at the date of the inheritance.

(4) (a) In paragraph (b), the expression “shares in a private company” is construed by reference to the meanings that “share” and “private company” have, respectively, in section 27 .

(b) Where a person becomes beneficially entitled in possession to a benefit, and the property in which the benefit is taken consists wholly or partly of shares in a private company and where the consideration referred to in subsection (1), being consideration in relation to a disposition, could not reasonably be regarded (taking into account the disponent's position prior to the disposition) as representing full consideration to the disponent for having made such a disposition, subsection (1) is deemed to apply as if “otherwise than for full consideration in money or money's worth paid by such person” were deleted in that subsection.”

### Section 5 CATCA 2003

“(1) For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than 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) A gift is deemed—

(a) to consist of the whole or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which the benefit is charged or secured or on which the donee is entitled to have it charged or secured, and

(b) if the benefit is an annuity or other periodic payment which is not charged on or secured by any property and which the donee is not entitled to have so charged or secured, to consist of such sum as would, if invested on the date of the gift in the security of the Government which was issued last before that date for subscription in the State and is redeemable not less than 10 years after the date of issue, yield, on the basis of the current yield on the security, an annual income equivalent to the annual value of the annuity or of the other periodic payment receivable by the donee.

(3) For the purposes of section 6 (1) (c) and 6(2) (d), the sum referred to in subsection (2) (b) is deemed not to be situate in the State at the date of the gift.

(4) Where a person makes a disposition under which a relative of the person becomes beneficially entitled in possession to any benefit, the creation or disposition in favour of the person of an annuity or other interest limited to cease on the death, or at a time ascertainable only by reference to the death, of the person, shall not be treated for the purposes of this section as consideration for the grant of such benefit or of any part of such benefit.

(5) For the purposes of this Act, “appropriate part”, in relation to property referred to in subsection (2), means that part of the entire property in which the benefit subsists, or on which the benefit is charged or secured, or on which the donee is entitled to have it so charged or secured, which bears the same proportion to the entire property as the gross annual value of the benefit bears to the gross annual value of the entire property, and the gift shall be deemed to consist of the appropriate part of each and every item of property comprised in the entire property.

(6) (a) *Where a contract or agreement was entered into, under or as a consequence of which a person acquired the right, otherwise than for full consideration in money or money's worth, to have a benefit transferred to that person, or to another in that person's right or on that person's behalf, and an act or acts is or are done, on or after that date, in pursuance of, or in performance or satisfaction, whether in whole or in part, of such contract or agreement, then the gift or inheritance, as the case may be, taken by or in right or on behalf of that person, is deemed to have been taken, not when the right was acquired, but either—*

*(i) when the benefit was transferred to that person or to another in that person's right or on that person's behalf, or*

*(ii) when that person or another in that person's right or on that person's behalf became beneficially entitled in possession to the benefit,*

*whichever is the later.*

(b) *In this subsection, a reference to a contract or agreement does not include a reference to a contract or agreement—*

*(i) which is a complete grant, transfer, assignment or conveyance, or*

*(ii) which was enforceable by action.*

(7) (a) *In paragraph (b), the expression “shares in a private company” shall be construed by reference to the meanings that “share” and “private company” have, respectively, in section 27 .*

(b) *Where a person becomes beneficially entitled in possession to a benefit, and the property in which the benefit is taken consists wholly or partly of shares in a private company and where the consideration referred to in subsection (1), being consideration in relation to a disposition, could not reasonably be regarded (taking into account the disponent's position prior to the disposition) as representing full consideration to the disponent for having made such a disposition, subsection (1) is deemed to apply as if “otherwise than for full consideration in money or money's worth paid by such person” were deleted in that subsection.”*

### Section 12 CATCA 2003

(1) *If—*

(a) (i) *a benefit under a will or an intestacy, or*

*(ii) an entitlement to an interest in settled property.*

*is disclaimed;*

(b) *a claim—*

*(i) under a purported will in respect of which a grant of representation (within the meaning of the Succession Act 1965) was not issued, or*

*(ii) under an alleged intestacy where a will exists in respect of which such a grant was issued,*

*is waived; or*

(c) *a right under Part IX of the Succession Act 1965 , or any analogous right under the law of another territory, is renounced, disclaimed, elected against or lapses,*

*any liability to tax in respect of such benefit, entitlement, claim or right shall cease as if such benefit, entitlement, claim or right, as the case may be, had not existed.*

(2) *Notwithstanding anything contained in this Act—*

(a) *a disclaimer of a benefit under a will or intestacy or of an entitlement to an interest in settled property;*

(b) *the waiver of a claim—*

(i) *under a purported will in respect of which a grant of representation (within the meaning of the Succession Act 1965) was not issued, or*

(ii) *under an alleged intestacy where a will exists in respect of which such a grant issued; or*

(c) (i) *the renunciation or disclaimer of,*

(ii) *the election against, or*

(iii) *the lapse of,*

*a right under Part IX of the Succession Act 1965, or any analogous right under the law of another territory,*

*is not a disposition for the purposes of this Act.*

(3) *Subsection (1) shall not apply to the extent of the amount of any consideration in money or money's worth received for the disclaimer, renunciation, election or lapse or for the waiver of a claim; and the receipt of such consideration is deemed to be a gift or an inheritance, as the case may be, in respect of which no consideration was paid by the donee or successor and which was derived from the disponent who provided the property in relation to which the benefit, entitlement, claim or right referred to in subsection (1), arose.”*

#### Section 28 CATCA 2003

*“(1) In this section, “incumbrance-free value”, in relation to a taxable gift or a taxable inheritance, means the market value at the valuation date of the property of which the taxable gift or taxable inheritance consists at that date, after deducting any liabilities, costs and expenses that are properly payable out of the taxable gift or taxable inheritance.*

*(2) Subject to this section (but except where provided in section 89), the taxable value of a taxable gift or a taxable inheritance (where the interest taken by the donee or successor is not a limited interest) is ascertained by deducting from the incumbrance-free value of such a taxable gift or a taxable inheritance the market value of any bona fide consideration in money or money's worth, paid by the donee or successor for the gift or inheritance, including—*

(a) *any liability of the disponent which the donee or successor undertakes to discharge as that disponent's own personal liability, and*

(b) *any other liability to which the gift or inheritance is subject under the terms of the disposition under which it is taken,*

*and the amount so ascertained is the taxable value, but no deduction shall be made under this subsection in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.*

*(3) Where a liability (other than a liability within the meaning of subsection (9)) for which a deduction may be made under subsection (1) or (2) is to be discharged after the time when it is to be taken into account as a deduction under either of those subsections, it is valued for the purpose of making such a deduction at its current market value at the time when it is to be so taken into account.*

*(4) The taxable value of a taxable gift or a taxable inheritance, where the interest taken by the donee or the successor is a limited interest, is ascertained as follows—*

*(a) the value of the limited interest in a capital sum equal to the incumbrance-free value is ascertained in accordance with the Rules contained in Schedule 1 , and*

*(b) from the value ascertained in accordance with paragraph (a) a deduction is made in respect of the market value of any bona fide consideration in money or money's worth paid by the donee or the successor for the gift or the inheritance and the amount remaining after such deduction is the taxable value, but no deduction is made under this paragraph in respect of any liability which is to be deducted in ascertaining the incumbrance-free value.*

*(5) A deduction shall not be made under this section—*

*(a) in respect of any liability the payment of which is contingent on the happening of some future event, but if the event on the happening of which the liability is contingent happens and the liability is paid, then, on a claim for relief being made to the Commissioners and subject to the other provisions of this section, a deduction is made in respect of the liability and such adjustment of tax as is appropriate is made; and such adjustment is made on the basis that the donee or successor had taken an interest in possession in the amount which is to be deducted for the liability, for a period certain which was equal to the actual duration of the postponement of the payment of the liability,*

*(b) in respect of any liability, costs or expenses in so far as the donee or successor has a right of reimbursement from any source, unless such reimbursement cannot be obtained,*

*(c) in respect of any liability created by the donee or successor or any person claiming in right of the donee or successor or on that donee or successor's behalf,*

*(d) in respect of tax, interest or penalties chargeable under this Act in respect of the gift or inheritance, or of the costs, expenses or interest incurred in raising or paying the same,*

*(e) in respect of any liability in so far as such liability is an incumbrance on, or was created or incurred in acquiring, any property which is comprised in any gift or inheritance and which is exempt from tax under any provision of this Act or otherwise,*

*(f) in the case of any gift or inheritance referred to in section 6 (1) (c), 6 (2) (d), 11 (1) (b) or 11 (2) (c) in respect of—*

*(i) any liability, costs or expenses due to a person resident outside the State (except in so far as such liability is required by contract to be paid in the State or is charged on the property which is situate in the State and which is comprised in the gift or inheritance), or*

*(ii) any liability, costs or expenses in so far as the same are charged on or secured by property which is comprised in the gift or inheritance and which is not situate in the State,*

*except to the extent that all the property situate outside the State and comprised in the gift or inheritance is insufficient for the payment of the liability, costs or expenses,*

*(g) for any tax in respect of which a credit is allowed under section 106 or 107.*

*(6) In the case of a gift or inheritance referred to in subsection (5) (f), any deduction to be made under subsection (2) or (4) (b) is restricted to the proportion of the consideration*

*which bears the same proportion to the whole of the consideration as the taxable gift or taxable inheritance bears to the whole of the gift or the whole of the inheritance.*

*(7) A deduction shall not be made under this section—*

*(a) more than once for the same liability, costs, expenses or consideration, in respect of all gifts and inheritances taken by the donee or successor from the disponer, or*

*(b) for any liability, costs, expenses or consideration, a proportion of which is to be allowed under section 89 (2) (ii) or (iii) in respect of a gift or inheritance taken by the donee or successor from the disponer.*

*(8) Where a taxable gift or a taxable inheritance is subject to a liability within the meaning of subsection (9), the deduction to be made in respect of that liability under this section shall be an amount equal to the market value of the whole or the appropriate part, as the case may be, of the property, within the meaning of section 5 (5).*

*(9) For the purpose of subsection (8), “liability”, in relation to a taxable gift or a taxable inheritance, means a liability which deprives the donee or successor, whether permanently or temporarily, of the use, enjoyment or income in whole or in part of the property, or of any part of the property, of which the taxable gift or taxable inheritance consists.*

*(10) Where—*

*(a) bona fide consideration in money or money's worth has been paid by a person for the granting to that person, by a disposition, of an interest in expectancy in property, and*

*(b) at the coming into possession of the interest in expectancy, that person takes a gift or an inheritance of that property under that disposition,*

*the deduction to be made under subsection (2) or (4) (b) for consideration paid by that person is a sum equal to the same proportion of the taxable value of the taxable gift or taxable inheritance (as if no deduction had been made for such consideration) as the amount of the consideration so paid bore to the market value of the interest in expectancy at the date of the payment of the consideration.*

*(11) Any deduction, under this section, in respect of a liability which is an incumbrance on any property, is, so far as possible, made against that property.”*

### Section 89 CATCA 2003

*“(1) In this section—*

*“agricultural property” means agricultural land, pasture and woodland situate in the State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property;*

*“agricultural value” means the market value of agricultural property reduced by 90 per cent of that value;*

*“farmer” in relation to a donee or successor, means an individual who is domiciled in the State and in respect of whom not less than 80 per cent of the market value of the property to which the individual is beneficially entitled in possession is represented by the market value of property in the State which consists of agricultural property, and, for the purposes of this definition—*



*(a) no deduction is made from the market value of property for any debts or encumbrances, and*

*(b) an individual is deemed to be beneficially entitled in possession to—*

*(i) an interest in expectancy, notwithstanding the definition of “entitled in possession” in section 2, and*

*(ii) property which is subject to a discretionary trust under or in consequence of a disposition made by the individual where the individual is an object of the trust.*

*(2) Except where provided in subsection (6), in so far as any gift or inheritance consists of agricultural property—*

*(a) at the date of the gift or at the date of the inheritance, and*

*(b) at the valuation date,*

*and is taken by a donee or successor who is, on the valuation date and after taking the gift or inheritance, a farmer, section 28 (other than subsection (7)(b) of that section) shall apply in relation to agricultural property as it applies in relation to other property subject to the following modifications—*

*(i) in subsection (1) of that section, the reference to market value shall be construed as a reference to agricultural value,*

*(ii) where a deduction is to be made for any liability, costs or expenses in accordance with subsection (1) of that section only a proportion of such liability, costs or expenses is deducted and that proportion is the proportion that the agricultural value of the agricultural property bears to the market value of that property, and*

*(iii) where a deduction is to be made for any consideration under subsection (2) or (4)(b) of that section, only a proportion of such consideration is deducted and that proportion is the proportion that the agricultural value of the agricultural property bears to the market value of that property.*

*(3) Where a taxable gift or a taxable inheritance is taken by a donee or successor subject to the condition that the whole or part of that taxable gift or taxable inheritance will be invested in agricultural property and such condition is complied with within 2 years after the date of the gift or the date of the inheritance, then the gift or inheritance is deemed, for the purposes of this section, to have consisted—*

*(a) at the date of the gift or at the date of the inheritance, and*

*(b) at the valuation date,*

*of agricultural property to the extent to which the gift or inheritance is subject to such condition and has been so invested.*

*(4) (a) The agricultural value shall cease to be applicable to agricultural property, other than crops, trees or underwood, if and to the extent that such property, or any agricultural property which directly or indirectly replaces such property—*

*(i) is sold or compulsorily acquired within the period of 6 years after the date of the gift or the date of the inheritance, and*

*(ii) is not replaced, within a year of the sale or within 6 years of the compulsory acquisition, by other agricultural property,*

*and tax is chargeable in respect of the gift or inheritance as if the property were not agricultural property, but this paragraph shall not apply where the donee or successor dies before the property is sold or compulsorily acquired.*

*(b) If an arrangement is made, in the administration of property subject to a disposition, for the appropriation of property in or towards the satisfaction of a benefit under the disposition, such arrangement is deemed not to be a sale or a compulsory acquisition for the purposes of paragraph (a).*

*(c) The agricultural value in relation to a gift or inheritance referred to in subsection (2) shall cease to be applicable to agricultural property, other than crops, trees or underwood, if the donee or successor is not resident in the State for any of the 3 years of assessment immediately following the year of assessment in which the valuation date falls.*

*(5) For the purposes of subsection (2), if, in the administration of property subject to a disposition, property is appropriated in or towards the satisfaction of a benefit in respect of which a person is deemed to take a gift or an inheritance under the disposition, the property so appropriated, if it was subject to the disposition at the date of the gift or at the date of the inheritance, is deemed to have been comprised in that gift or inheritance at the date of the gift or at the date of the inheritance.*

*(6) Subsection (2) shall apply in relation to agricultural property which consists of trees or underwood as if the words “and is taken by a donee or successor who is, on the valuation date and after taking the gift or inheritance, a farmer,” were omitted from that subsection.*

*(7) In this section, any reference to a donee or successor includes a reference to the transferee referred to in section 32 (2).”*

*Part 6 of the Revenue Commissioner’s Tax and Duty Manual (CAT Part 06 – Disclaimers of benefits) provides:*

*“1. Introduction*

*Section 12 of the Capital Acquisitions Tax Consolidation Act 2003 deals with the effect and consequences of disclaimers of benefits. The section only applies where the person who disclaims a benefit does not name another person who is to benefit. Where there is a pure disclaimer the general rules of law (Succession Act 1965) establish who is to benefit.*

*2. Disclaimers - 10 points to remember*

*1. A person who disclaims a benefit no longer has a liability to CAT in respect of that disclaimed benefit.*

*2. A disclaimer is not of itself a disposition for CAT purposes.*

*3. A person can disclaim for consideration. Any consideration is a benefit moving from the original disponent to the person disclaiming (i.e. a substituted gift or inheritance).*

*4. A disclaimer in favour of a named person is treated as an acquisition and a subsequent disposal and there is, therefore, two separate charges to CAT.*

*5. A disclaimed legacy falls into the residue of an estate.*

*6. If a residuary legatee disclaims, the residue is distributed as if there was an intestacy in respect of the residue.*

*7. A share of the residue may be disclaimed. That share is then distributed as on Intestacy. A person who therefore inherits a half-share of the residue can disclaim that half-share.*

8. A person cannot partially disclaim the residue or partially disclaim a share of the residue.

9. A person may, however, disclaim one of several legacies, either pecuniary or specific.

10. If a life interest or other limited interest is disclaimed the remainder interest falls in immediately.

### 3. Examples

*Example 1: John dies testate. He leaves a pecuniary legacy of €60,000 to his brother Michael and the residue of his estate to his daughter Mary. Michael, who is financially well off, decides to disclaim the legacy to him of €60,000. The legacy falls into the residue of the estate and is inherited by Mary, together with the residue of the estate. Michael has no liability to CAT as he has disclaimed the benefit to him. Mary has inherited the entire estate from her father John and has taken no benefit from Michael...*

## Submissions

### Appellant

19. The Appellant submitted that section 12(3) CATCA 2003 directs the disclaimer amount received by the Appellant's sister [REDACTED] ("her sister") is treated as a benefit passing from the deceased and this was confirmed by the Revenue Commissioner's manual on CAT at part 6 which states "*A person can disclaim for consideration. Any consideration is a benefit moving from the original disponent to the person disclaiming (i.e. a substituted gift or inheritance).*"
20. The Appellant stated that as her sister disclaimed her inheritance from the deceased in return for the disclaimer amount then in accordance with section 12 (3) CATCA 2003, her sister was deemed to have received an inheritance of the disclaimer amount from the deceased.
21. The Appellant submitted as she did not receive the monies and then pay them to her sister as the disclaimer amount was paid directly from the Executor's account to her sister, then it stood to reason that the Appellant did not pay the disclaimer amount or any consideration to her sister.
22. The Appellant added as the disclaimer paid to her sister was deemed to be an inheritance from the deceased, it could not also be an inheritance by the Appellant from the deceased. The Appellant was of the view that the Respondent sought to treat the disclaimer amount as being received by both the Appellant and her sister as the Respondent was including the disclaimer amount in the gross value of assets when calculating the Appellant's liability to CAT. The effect of this, she submitted was that the gross value of the Estate was exceeded by the amount of the disclaimer amount. In summary the Appellant submitted that she should just be taxable on the amount **received** by her and as she had not received the disclaimer amount, then her CAT return should just reflect the value of the assets received by her, that being the gross amount of the Estate less the disclaimer amount and the liabilities, costs and expenses of the deceased.
23. The Appellant further submitted that while the Respondent contended that both the disclaimer consideration and liabilities, costs and expenses of the deceased must be apportioned in accordance with section 89 (2) (ii) and section 28 CATCA 2003, these sections pertained to just liabilities and costs "*that are properly payable out of the ... taxable inheritance*" and as the "liabilities and costs" were not payable out of the taxable inheritance these sections should not apply.

24. To support this contention the Appellant illustrated the following sections of the CATCA 2003:
- (i) Section 89 (2) (iii) – “...where a deduction is to be made for any consideration under subsection 2 or 4 (b) [emphasis added] ... of that section [section 28], only a proportion...”
  - (ii) Section 28 (2) – “... the taxable value of...a taxable inheritance ...is ascertained by deducting from the incumbrance free value... the market value of any bona fide consideration....paid by the done or successor [emphasis added] for...the inheritance.”
  - (iii) Section 28 (4) (b) – “... a deduction is made in respect of the market value of any bona fide consideration... paid by the done or successor [emphasis added]...for the inheritance.”
25. The Appellant submitted that as section 28 (2) and 4 (b) CATCA 2003 refer to consideration **paid by the successor** that the Respondent’s contention that the disclaimer consideration should be apportioned between the agricultural and non-agricultural assets was erroneous.
26. The Appellant further submitted that as section 89 (2) (iii) CATCA 2003 similarly requires the consideration for apportionment be paid by the Appellant and as the disclaimer consideration was not paid by the Appellant in a “private capacity”, then the Appellant did not pay this or any consideration to her sister. The Appellant added that as section 12 of the Act deems the disclaimer amount to be received by the disclaiming party (her sister) from the Testator (the deceased), then this compounded their submission that no consideration was paid by the Appellant.
27. The Appellant claimed that as the consideration paid under the terms of the disclaimer was not paid by her, then they should be dealt with under section 12 CATCA 2003 and as such, they were not within the ambit either of section 28 or section 89 CATCA 2003.
28. The Appellant further submitted that as the disclaimer consideration was paid out of the non-agricultural property, she was entitled to reduce down the non-agricultural property by the amount of the disclaimer and calculate her CAT liability on the net amount received by her.
29. In summation, the Appellant submitted that as the disclaimer amount was not paid by her no apportionment of the disclaimer amount was required under the legislation. The Appellant was of the view that she was liable to inheritance tax on the property to which she became beneficially entitled in possession to and that property equated to the full value of the agricultural assets and the non-agricultural assets less the amount paid for the disclaimer and the liabilities, costs and expenses of the deceased.

*Respondent*

30. The Respondent stated that section 28 CATCA 2003 specifically provides for the apportionment of costs, liabilities and consideration between different properties. In particular, they advised section 28 (11) CATCA 2003 provides that deductions which are an encumbrance on a specific property are allowed against that property only. They submitted as there was no specific bequest of the agricultural property under the terms of the deceased’s will, then any encumbrances which would include both the disclaimer amount and the liabilities, costs and expenses of the deceased must be apportioned on a value basis between the agricultural and non-agricultural assets bequeathed by the deceased.
31. The Respondent stated that section 89 (2) CATCA 2003 provides in circumstances where agricultural relief is claimed, subsection (ii) only allows such portion of the liabilities, costs and expenses which are referable to that agricultural property to be deducted and “the

portion” is the proportion the that agricultural value of the agricultural property bears to the market value of the property which is 10%.

32. The Respondent submitted that section 89 (2) (ii) and (iii) CATCA 2003 was the relevant legislation to be examined and it provided that all costs liabilities, expenses and consideration should be apportioned not just over the non-agricultural assets of the Estate but the entire assets of the Estate. In addition, they submitted that such value of the costs, liabilities and expenses referable to the agricultural property should be discounted by 90% of the value in accordance with section 89 (2) (ii) CATCA 2003.

### **Material Facts**

33. The Commissioner found the following material facts:

- The deceased’s will did not contain any specific bequest of the agricultural property under its terms and stipulated that “*all of [the deceased’s] property real or personal be split in equal shares subject to payment of [the deceased’s] just debts, funeral expenses and testamentary expenses between the beneficiaries*”.
- The Appellant’s sister in consideration of the disclaimer amount disclaimed a half share entitlement to the assets bequeathed to her by the deceased which comprised both agricultural and non-agricultural assets.
- While the disclaimer amount paid was included in the gross value of total assets used in the Respondent’s calculation of the Appellant’s CAT liability, this did not lead to “double counting” as alleged by the Appellant. In their calculations, the Respondent subsequently allowed the disclaimer amount as a deduction from the gross value of total assets in computing the liability which negates the Appellant’s submission.

### **Analysis**

34. The central issue to be determined by the Commissioner is whether the Appellant is entitled to deduct the full value of all the liabilities, costs and expenses of the Estate and the consideration paid under the terms of the disclaimer signed by the Appellant’s sister from the non-agricultural assets of the Estate in computing the Appellant’s liability to CAT or whether such deductions must be apportioned between agricultural and non-agricultural assets on a value basis.
35. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments/estimates raised by the Respondent 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.*’
36. In terms of statutory interpretation, the approach to be applied is a literal one based on the relevant jurisprudence including inter alia, *Bookfinders Limited v Revenue Commissioners* [2020] IESC 60, *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Inspector of Taxes v Kiernan* [1982] ILRM 13 and *Revenue Commissioners v Doorley* [1933] IR 750.
37. It is established law that a beneficiary of a testamentary gift cannot be forced to accept it, and is entitled to disclaim the testamentary gift (*Townson v. Tickell* (1819) 3 B& Ald 31).
38. Section 91 of the Succession Act 1965 provides:

*“Unless a contrary intention appears from the will, any estate comprised or intended to be comprised in any devise or bequest contained in the will which fails or is void by reason of the fact that the devisee or legatee did not survive the testator, or by reason of the devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in any residuary devise or bequest, as the case may be, contained in the will.”*

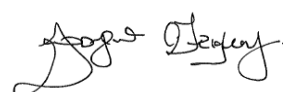
39. It follows that where a gift in a will is disclaimed the subject-matter of the gift passes with the residue. *Skrymsler v. Northcote* (1818) 1 Sw. 566 established that unless there is a contrary intention in the will if a residuary gift fails in whole or in part, the part undisposed of passes on intestacy.
40. Accordingly, the Commissioner determines that the Appellant’s sister was entitled to disclaim her inheritance and when she did, her share of the residuary gift passed back to the Estate and under the rules of intestacy subsequently passed to the Appellant.
41. The effect of a disclaimer is set out in the *Conveyancing and Property Law Journal* 2002, 7(1), at pages 17-19 where it states:
- “the disclaimed property is deemed never to have come into the hands of the beneficiary disclaiming, so that the persons who ultimately receive the benefit of the gift or share on intestacy are deemed to have received it directly from the deceased.”*
42. Section 12 CATCA 2003 confirms the above position and adds at paragraph (3), in circumstances where consideration is provided for the disclaimer, that the amount of consideration paid to the person so disclaiming is treated as an inheritance from the original disponer (in this case the deceased) and not a gift from the person benefiting from the disclaimer (in this case the Appellant).
43. The Commissioner agrees with the Appellant’s submissions that as the disclaimer amount was not paid by the Appellant, then subsections (a) and (b) of Section 28 CATCA do not apply as the “bona fide consideration in money or monies worth” (the disclaimer amount) was not paid by the Appellant.
44. Section 28 (2) CATCA 2003 states that the taxable value of the inheritance is ascertained by deducting from the incumbrance-free value certain deductions, and accordingly regard must be had to section 28 (1) which defines incumbrance-free value as:
- “in relation to the taxable gift or taxable inheritance, the market value of the property of which the taxable gift or taxable inheritance consists at that date, after deducting any liabilities, costs and expenses that are properly payable out of that gift or inheritance.”*
45. The Commissioner determines that both the disclaimer amount and the liabilities, costs and expenses of the deceased would be properly classified as “*liabilities, costs and expenses that are properly payable out of the inheritance*” and the Appellant seems to have the same view given that these amounts were deducted from the gross assets of the Estate in submitting the Appellant’s CAT return to the Respondent.
46. In establishing that the disclaimer amount and the liabilities, costs and expenses of the deceased constitute a deduction under section 28 CATCA 2003, regard must be had to subsection (11) of that section which provides:
- “Any deduction, under this section, in respect of a liability which is an incumbrance on any property, is so far as possible, made against that property”.*
47. The Commissioner notes that neither the deceased’s will nor the deed of disclaimer executed by the Appellant’s sister appropriates the liabilities costs and expenses of the deceased or the disclaimer amount against any specific property. As a result, the Commissioner determines that such deductions must be appropriated on a value basis

against the deceased's total assets which would include the agricultural and non-agricultural assets.

48. As there is nothing controversial in allowing a *pro rata* deduction of liabilities costs and expenses of the deceased or the disclaimer amount against the non-agricultural assets since they enjoy total deductibility, final regard must be had by the Commissioner to the provisions of section 89 (2) (ii) and (iii) CATCA 2003 which provide that the "*liabilities, costs, expenses or consideration*" must be reduced in proportion to the proportion that the agricultural value of the agricultural property bears to the market value of the property".
49. As Section 89 CATCA 2003 provides in circumstances where agricultural relief applies, the value of the property may be discounted by 90% of the market value, the Commissioner determines that the portion of the liabilities costs and expenses of the deceased and the disclaimer amount referable to the agricultural assets must be discounted in like fashion by 90% of the amount so apportioned.
50. The Commissioner has examined the Respondent's calculation of the Appellant's additional CAT liability and is satisfied that the correct computational criteria was used by the Respondent and so determines that the assessment should stand.

#### **Determination**

51. For the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the relevant tax was not payable.
52. It is understandable that the Appellant might be disappointed with the outcome of her appeal. The Appellant was correct to check to see whether her legal rights were correctly applied. The Commissioner would like to express his gratitude to both parties for the meticulous fashion in which the hearing documentation was presented and the courteous manner displayed between the parties during the hearing.
53. This Appeal is determined in accordance with Part 40A Taxes Consolidation Act 1997 ("TCA 1997") and in particular, section 949AK thereof. 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  
29<sup>th</sup> April 2022