



50TACD2023

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 Appeal Commission (hereinafter "the Commission") as an appeal against a Notice of Amended Assessment for the year ending 31 August 2018 (hereinafter the "Amended Assessment") to Capital Acquisitions Tax (hereinafter "CAT") raised on 20 November 2020 by the Revenue Commissioners (hereinafter "the Respondent").
2. The amount of tax at issue is €17,386.00.

**Background**

3. Mrs ████████████████████ (hereinafter the "Appellant") is a resident of the United Kingdom and was the joint holder of a bank account held in the Irish State with her sister-in-law ████████████████████ (hereinafter the "Deceased") who died on ██████████ 2016.
4. On 11 August 2018 the Appellant submitted a Form CA4 to the Respondent requesting a letter of clearance (Form IT8) in respect of the jointly held bank account. The Form CA4 contained the following information:

Value of the joint bank account	€67,760.00
Relationship of the joint holders	Sisters-in-law
Date on which the property was put into joint names	9 November 2015
By whom and in what share the property was provided	The Deceased
Purpose of putting property into joint names	In consideration of taking care of the Deceased when she was ill
How and in what shares the income from the property was dealt with or enjoyed	By the Deceased fully
Title under which the property passes	Survivorship

5. On 19 May 2020 the Appellant wrote to the Respondent to query if any inheritance tax was due on the joint account and on 9 June 2020 the Respondent wrote to the Appellant advising the Appellant that if the Deceased put all of the money into the joint account then the Appellant must pay CAT if the value exceeded the Group C threshold of €16,250. The Respondent also advised the Appellant that if she had put half of the value into the joint account and if she was inheriting the other half of the value of the joint account then she would be liable to CAT on any amount exceeding the Group C threshold of €16,250 at the rate of 33%.
6. On 23 July 2020 the Appellant submitted a cheque in the amount of €5,860.00 towards a payment of CAT in relation to monies held in the joint account.
7. On 28 July 2020 the Appellant submitted a CAT return Form IT38 to the Respondent which indicated the value of the benefit as being €34,000 and the net CAT liability as being €5,860.00.
8. On 7 August 2020 the Respondent wrote to the Appellant noting that the Form CA4 signed by the Appellant on 11 August 2018 confirmed that all of the property in the joint account had been provided by the Deceased and that the purpose of putting the property into joint names was in consideration of the Appellant taking care of the Deceased when she was ill. On that basis the Respondent informed that Appellant that the value of the benefit of €34,000 contained on the Form IT38 returned by the Appellant was incorrect and advising

the Appellant that on the basis of the information contained in the Form CA4 of 11 August 2018 the benefit received by the Appellant was €67,760.00.

9. By letter dated 26 August 2020 the Appellant submitted an updated Form IT38 to the Respondent which indicated the value of the benefit as being €67,760.00 with net tax payable of €17,000.
10. On 17 November 2020 the Respondent issued a Notice of Acknowledgement to the Appellant advising that a balance of €13,265 in respect of CAT was due as follows:

Net Tax Payable	€17,386
Less Amount Paid	€ 5,860
Add Surcharge for Late Submission of Return	<u>€ 1,738</u>
Balance Payable	€13,265

11. On 20 November 2020 the Respondent raised the Amended Assessment.
12. The Appellant appealed the Amended Assessment to the Commission by way of a Notice of Appeal dated 17 December 2020.
13. On 21 September 2021 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the TCA1997 and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the TCA1997.

### **Legislation and Guidelines**

14. The legislation relevant to the within appeal is as follows:

#### Section 2 of the CATCA2003:

“ ...

*“date of the gift” means the date of the happening of the event on which the donee, or any person in right of the donee or on that donee’s behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift;*

...

*“donee” means a person who takes a gift;*

...

*“gift” means a gift which a person is by this Act deemed to take;*

*...*

Section 4 of the CATCA2003:

*“A capital acquisitions tax, to be called gift tax and to be computed in accordance with this Act, shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable gift taken by a donee.”*

Section 5 of the CATCA2003 – “Gift deemed to be taken”:

*“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.*

*...*

*(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.”*

Section 6 of the CATCA2003 – “Taxable gift”:

*“(2)In relation to a gift taken under a disposition, where the date of the disposition is on or after 1 December 1999, “taxable gift” in this Act means—*

*...*

*(d)in any other case, so much of the property of which the gift consists as is situate in the State at the date of the gift.”*

**Submissions**

Appellant’s Submissions

15. The Appellant submitted the following in support of this appeal in her Notice of Appeal:

*“I was given this money as payment from by sister-law [sic] ██████ as reward for my help when she was ill. ██████ told me to use this money as I wanted. I could have withdrawn all of this money and used it prior to her death. So in my view is it not inheritance.*

*See enclosed letter to revenue”*

16. The letter referred to by the Appellant in her Notice of Appeal was a letter from the Appellant and her husband to the Respondent date 20 November 2020 as follows:

*“Dear Sir / Madam,*

*I write to you on behalf of my wife ██████ and in response to your demand just received.*

*I take issue with the fact that this is being treated as an inheritance...*

*This account was set up in such way so as ██████ could withdraw the money which was intended as a reward for time and effort. ██████ was free to use this money prior to ██████’s death so how could it be an inheritance.*

*██████ spent a lot of time caring for my sister ██████ (may she rest in peace) and I do not wish to go into detail at this point. But if that was ██████’s way of rewarding ██████ it is not for the Irish Revenue to posthumously judge her intentions.*

*...”*

17. The Notice of Appeal also contained a copy of a letter from a firm of UK solicitors to the Appellant dated 5 May 2020 which stated as follows:

*“I understand... that you have asked ... about the inheritance tax position on the joint account which you held with ██████████ at the date of her death.*

*I can confirm that half of the money in the account has had inheritance tax paid on it on the basis that it belonged to ██████████ at the date of her death. The balance of the money I understand belonged to you and was therefore not taxable.*

*...”*

18. The following was submitted in support of this appeal in the Appellant’s Statement of Case:

*“Again, I write on behalf of my wife ██████████ as she is not up to this at the moment.*

*This is regarding a joint account that ██████████ had with my sister ██████████ prior to her death in 2016. As ██████████ lived on her own and was in poor health for some time prior to her death, ██████████ spent a considerable amount of time taking care of her. By way of compensation or consideration, ██████████ insisted on putting ██████████’s name on an account she had in Ireland, this account was set up whereby ██████████ could withdraw any or all of the money at any time she required. The revenue described this as an inheritance, when I pointed out that ██████████ could withdraw the money prior to ██████████’s death and therefore could not be an inheritance, they then went on to describe it as a gift.*

*Now in the English language the words COMPENSATION and GIFT are two different words with two completely different meanings.*

*I would have thought the revenue at the very least would have awarded ██████████ the same dignity as HMRC whereby with regard to IHT they took 50% of this money into consideration, the other half deemed to be ██████████’s own money and therefore not taxable (enclosed please find letter from the solicitor who dealt with the will). ██████████ did not suffer any loss whatsoever in the process.*

*I have heard ██████████ say that when she come here in the early sixties at the age 18 and found employment, she sent most of her spare cash back to support her parents and siblings in the west of Ireland and I find it quite galling to have people who never even knew what it was like to be short of money, making decisions about is ██████████’s own money.*

*In their letter of 19/01/2021 they state that for IT38 with figures input by ██████████ will be brought to the attention of the Appeal Commissioners. May I kindly point out, that form*

*was filled in and signed by ██████ back in July 2020 when she agreed to pay CAT on the other half (see enclosed letter). This form was returned to ██████ with instructions to change wording and the figures and she felt coerced into doing so at the time. Now a document that has been altered at some considerable time after it has been signed counts for nothing in legal terms, and is null and void.”*

”

### Respondent's Submissions

19. The Respondent submitted that as the entire amount of the money in the joint account held by the Appellant and the Deceased was provided by the Deceased, this means that the Appellant was deemed to have taken an inheritance of the funds in the joint account pursuant to section 10(1) of the Capital Acquisitions Tax Act 2003 (hereinafter the “CATCA2003”).

20. The Respondent submitted that, as the Appellant was deemed to have taken an inheritance of the funds in the joint account, she was therefore liable to CAT on the inheritance.

### **Material Facts**

21. The following material facts are not at issue in the within appeal and the Commissioner accepts same as a material fact:

- (i) The Appellant was the holder of a joint account with the Deceased;
- (ii) The entire amount of the money in the joint account held by the Appellant and the Deceased was provided by the Deceased;
- (iii) On the death of the Deceased the Appellant became entitled to the entire balance of the money held in the joint account;
- (iv) The Appellant cared for the Deceased at the end of her life.

22. The following material fact is at issue in the within appeal:

- (i) The Deceased deposited the money in the joint account as compensation to the Appellant for the care which she gave to the Deceased prior to her death;
- (ii) The Appellant became entitled to the money in the joint account as a result of a gift.

*The Deceased deposited the money in the joint account as compensation to the Appellant for the care which she gave to the Deceased prior to her death:*

23. The question which arises for the Commissioner to decide is whether the monies deposited by the Deceased into the joint account were compensation to the Appellant from the Deceased for the care which she gave to the deceased prior to her death. The Commissioner accepts that the Appellant gave great care and attention to the Deceased prior to her death. However, the Commissioner cannot guess or surmise as to why the Deceased deposited the monies into the joint account. No evidence, documentary or otherwise, has been submitted to the Commissioner which establishes the reason for the Deceased depositing the monies in the joint account and in particular no evidence, documentary or otherwise has been submitted to the Commissioner which establishes that the Deceased deposited the monies in the joint account for the purpose of compensating the Appellant for the care which she gave to the Deceased prior to her death.

24. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

25. The Appellant has not discharged the burden of proof in relation to this material fact and has not established the reason for the Deceased depositing the monies in the joint account. Therefore this material fact is not accepted.

*The Appellant became entitled to the money in the joint account as a result of a gift:*

26. The position in relation to funds held in joint bank accounts upon the death of one of the joint holders of a bank account was clarified by the Supreme Court in the judgment of O’Flaherty J *Lynch v Burke* [1996] I.L.R.M 114 [hereinafter “*Lynch v Burke*”] when he held that a survivor has a legal interest in the monies on deposit in a joint bank account either based on contract, or by virtue of a gift that was made subject to the contingency of the death of the depositor. O’Flaherty J said the following at page 121:

*“I believe that at law the [survivor] had a legal interest in the monies on deposit either by reason of the contractual relationship of the parties or, in the alternative, as a gift which admittedly was not a completed gift in the conventional sense but is nonetheless*



*one that should be upheld as being a gift subject to a contingency viz. that of the death of the donor which contingency does not disqualify it as being a proper gift.”*

27. This means that on the death of a depositor, the surviving account holder has a legal interest in the monies held in a joint account either by way of contract or by virtue of a gift that was made subject to the contingency of the death of the depositor. It therefore follows that on the death of a depositor, the monies held in a joint account do not fall into a deceased person’s estate and are therefore not disposed of by the deceased by their will. This is known as a nuncupative disposition.
28. The Appellant has not submitted any evidence that a contract existed between her and the Deceased which establishes that the Appellant had a contractual right to the monies in the joint account. It must therefore follow, based on the Supreme Court judgment in *Lynch v Burke* that on the death of the Deceased on [REDACTED] 2016 the Appellant obtained a legal interest in the monies in the joint account by way of a gift that was made subject to the contingency of the death of the depositor. Therefore, this material fact is accepted.
29. For the avoidance of doubt the Commissioner finds the following material facts in this appeal:
- (i) The Appellant was the holder of a joint account with the Deceased;
  - (ii) The entire amount of the money in the joint account held by the Appellant and the Deceased was provided by the Deceased;
  - (iii) On the death of the Deceased the Appellant became entitled to the entire balance of the money held in the joint account;
  - (iv) The Appellant became entitled to the money in the joint account as a result of a gift;
  - (v) The Appellant cared for the Deceased at the end of her life.

### **Analysis**

30. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

31. The Commissioner has considered the submissions and documentation submitted on behalf of both Parties in the within appeal.

32. Having found as a material fact that on the death of the Deceased the Appellant became entitled to the entire balance of the money held in the joint account and having established that following the Supreme Court judgment in *Lynch v Burke* the Appellant obtained a legal interest in the money in the joint account by way of a gift, the Commissioner now turns to the treatment of gifts under the CATCA2003.

33. Section 2 of the CATCA2003 contains the following relevant definitions which establish that the Appellant is a “donee”:

“*donee*” means a person who takes a gift; and

“*gift*” means a gift which a person is by this Act deemed to take.

34. Section 4 of the CATCA2003 provides that a CAT to be called a “*gift tax*” shall be charged, levied and paid on the taxable value of every taxable gift taken by a donee.

35. Section 5(2)(a) of the CATCA2003 provides that a gift is deemed to consist of :

“...*the whole or the appropriate part, as the case may be, of the property in which the donee takes a benefit...*”

36. Section 5(2)(5) of the CATCA2003 defines the meaning of “*appropriate part*” in relation to the property referred to in section 5(2) of the CATCA2003 as meaning

“...*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.*”

37. Having found as a material fact that the entire amount of the money in the joint account held by the Appellant and the Deceased was provided by the Deceased, it follows that pursuant to the provisions of section 5(2)(a) and section 5(2)(5) of the CATCA2003 the gift received by the Appellant, as donee, from the Deceased was the entire amount of the money in the joint account.

38. Having established that the Appellant received a gift of the entire amount of the money in the joint account, it follows pursuant to section 4 of the CATCA2003 that a gift tax shall be levied and paid on the taxable value of the gift taken by the Appellant.
39. Therefore, as a result of the above the Commissioner finds that the Appellant was liable to pay gift tax as defined in section 4 of the CATCA2003 on the entire amount of the money held in the joint account at the time of the death of the Deceased, that is to say on the amount of €67,760.00. The Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the relevant tax was not payable.

### **Determination**

40. For the reasons set out above, the Commissioner determines that the within appeal has failed and as a result the CAT contained in the Amended Assessment raised by the Respondent on 20 November 2020 is payable.
41. It is understandable the Appellant will be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether her legal rights were correctly applied and in doing so was respectful of the Deceased.
42. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") 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 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll  
Appeal Commissioner  
31 January 2023

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.