



**AC Ref: 03TACD2016**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. During the tax year of assessment 2012, the Appellant received a cash gift from his/her brother/sister, **NAME REDACTED** ('the gift'). The gift arose from the proceeds of sale in respect of a property sold on 31 July 2012, located at **ADDRESS REDACTED** ('the property'). An assessment was raised on 28 March 2014 charging the Appellant to gift tax in accordance with Part 2 of the Capital Acquisitions Consolidation Act 2003 as amended ('CATCA2003'). The Appellant claimed that the Respondent had failed to take into account in calculating the gift tax, consideration paid in respect of the gift.

**Background**

2. **NAME REDACTED** ('the deceased') died testate on 26 December 2002 and was survived by his/her three children. Pursuant to the division of his/her estate, each adult child inherited a one-third interest in the property at **ADDRESS REDACTED**. With the agreement of his/her brothers/sisters, **NAME REDACTED** resided in the property post 26 December 2002, for a period of approximately 9 years. The property was sold on 31 July 2012.



3. While there had been some discussion as regards operating a disclaimer in respect of the interest of **NAME REDACTED** in the property, the parties eventually agreed that a disclaimer would be inoperable in the circumstances, as **NAME REDACTED** had derived benefit from his/her share in the estate.
4. On or about 31 July 2012, **NAME REDACTED** gifted half of his/her portion of the proceeds of sale (i.e. one-sixth of the sales proceeds of the property) to the Appellant. An assessment was raised on 28 March 2014 charging the Appellant to gift tax on the full amount of the gift, in accordance with Part 2 CATCA2003.
5. The Appellant contended for a reduction of the assessment on the basis that the gift, he/she submitted, was made in consideration of;
  - i. His/her agreement that his/her brother/sister would reside in the property rent free during the tax years 2002-2011.  
And/or
  - ii. The Appellant's acceptance of a reduced inheritance from the estate of his/her uncle, **NAME REDACTED**, who died testate on 16 July 2009.
6. The Appellant argued that the incumbrance-free value of the taxable gift should be reduced by the consideration attributable to the value of the rent foregone and/or the value of the reduced inheritance he/she agreed to accept in respect of his/her uncle's estate.

### **Evidence and Analysis**

#### **7. Rent free residence in the property**

Section 28(2) CATCA2003 provides;

*"Subject to this section ...., the taxable value of a taxable gift..... is ascertained by deducting from the incumbrance-free value of such a taxable gift .... the market value of*



*any bona fide consideration in money or money's worth, paid by the donee or successor for the gift....., including –*

- (a) any liability of the disponent which the donee or successor undertakes to discharge as that [donee or successor'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.”*

8. As a matter of contract law, past consideration is no consideration. While there are a series of common law exceptions to this general rule, section 28, CATCA2003 focuses on the issue of whether there exists a “*liability*” belonging to the disponent (and discharged by the donee) or a liability attaching to the gift, at the date of the gift.

9. Section 28(9) CATCA2003 provides;

*‘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. The reference to ‘property’ in this subsection is a reference to the subject matter of the gift, i.e. cash. At hearing, **NAME REDACTED** gave evidence that he/she and his/her brother/sister, the Appellant, were agreeable to their brother/sister, **NAME REDACTED**, residing in the property after the death of their mother in 2002 as **NAME REDACTED** did not have an alternative residence or means to acquire a suitable alternative residence at that time.



11. **NAME REDACTED** gave evidence that he/she and his/her brother/sister, the Appellant, did not insist on payment of rent by their brother/sister in respect of his/her residence of the property. **NAME REDACTED** also gave evidence that the decision to sell the property was not made until after the death of **NAME REDACTED** on 16 July 2009 when it transpired that **NAME REDACTEDS'** financial position had ameliorated.
12. The evidence indicates that it was not intended by the parties that rent would be paid either on an annual basis nor by means of lump sum repayment, in respect of the years **NAME REDACTED** resided in the property. There was no evidence of a rental agreement between the parties, either written or verbal, and no evidence of a loan agreement or a debt repayment arrangement. The question which arises therefore is whether there was, at the date of the gift on or about 31 July 2012, a "*liability of the disponent which the donee... undertakes to discharge*" within the meaning of section 28(2)(a) or whether the gift or inheritance was subject to "*any other liability... under the terms of the disposition under which it is [was] taken*" pursuant to section 28(2)(b) CATCA2003. Based on the evidence, I find that there was no "*liability*" within the meaning of section 28 CATCA2003.
13. Section 40 CATCA2003 provides;
- 'A person is deemed to take a gift in each relevant period during the whole or part of which that person is allowed to have the use, occupation or enjoyment of any property (to which property that person is not beneficially entitled in possession) otherwise than for full consideration in money or money's worth.'*
14. This provision deems the free use of property to be a gift to the recipient. Agent for the Appellant appeared to contend that this provision might be applicable insofar as it demonstrated that the free use of property can be considered an item of value (capable of being taxed) pursuant to the CATCA2003. While that proposition is not incorrect, the Appellant in this case was pursuing this point in an attempt to have the value of the occupation of the property during the years 2002-2011, treated as consideration for the cash gift received by the Appellant from his/her brother/sister. I do not accept this



submission. The appropriate section as regards consideration is section 28 CATCA2003, which does not apply, for the reasons stated above.

### Deed of Family Arrangement

15. It was submitted on behalf of the Appellant that as consideration for the gift received from his/her brother/sister, he/she accepted a lesser sum in respect of his/her inheritance from the estate of his/her uncle **NAME REDACTED** in that the inheritance was reduced by the amount of **AMOUNT REDACTED** pursuant to a deed of family arrangement dated 14 November 2010.
16. The deed of family arrangement is dated 14 November 2010 and the date of the gift arose about 31 July 2012. The deed of family arrangement makes no reference to the gift by **NAME REDACTED** to the Appellant and in fact, the gift did not occur until several years after the passing of **NAME REDACTED** and the execution of the deed of family arrangement. As a result, I find that the deed of family arrangement and the gift, the subject matter of this case, are not linked and so the acceptance of a lesser inheritance does not constitute consideration in respect of the gift pursuant to section 28 CATCA2003.

### **Conclusion**

17. In tax appeals before the Appeal Commissioners, the burden of proof rests on the Appellant. The Appellant must prove his/her case on the balance of probabilities and the authority for this is contained expressly in Part 40 of the TCA 1997 at section 934(3) which provides;

*“Where on appeal it appears to the Appeal Commissioners by whom the appeal is heard, or to a majority of such Appeal Commissioners, by examination of the appellant on oath or affirmation or by other lawful evidence that the appellant is overcharged by any assessment, the Appeal Commissioners shall abate or reduce the assessment accordingly, but otherwise the Appeal Commissioners shall determine the appeal by ordering that the assessment shall stand.”*



18. This section applies to the CATCA2003 via section 67(5) of the CATCA2003.
19. I understand that a sum has previously been taken into account as regards deductible costs and expenses and if the small gift exemption (section 69 CATCA2003) has not already been utilised, it will be available to the Appellant.
20. However, in my view, the evidence adduced at hearing on behalf of the Appellant as regards the non-payment of rent and the deed of family arrangement, was insufficient to establish on the balance of probabilities, that there was consideration available in respect of the gift, to reduce the incumbrance-free value (thus reducing the overall assessment) either pursuant to section 28 CATCA2003, or otherwise. As a result, gift tax is payable in accordance with the provisions of Part 2 CATCA2003.
21. Accordingly the appeal is determined in accordance with section 933(5) TCA 1997 as applied by section 67(5) CATCA2003.

**APPEAL COMMISSIONER**

**March 2016**

