



**156TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against an assessment to Capital Gains Tax (CGT) in relation to the tax year of assessment 2017.
2. The amount of tax involved in this appeal is €131,292.
3. The Notice of Appeal was received by the Tax Appeals Commission (TAC) on 13th July 2018.
4. By agreement between the parties, this appeal is adjudicated without a hearing in accordance with s.949U of the Taxes Consolidation Act, 1997

**Background and Agreed Facts**

5. The Appellant's father, Mr **REDACTED** died on 23<sup>rd</sup> November **REDACTED**. The sole legatees of the Will were the Appellant and her mother.



6. The Will stated:

*“All the net residue and remainder of my estate real and personal wheresoever situate of which I die seized possession or entitled or which I have power of appointment, I will demise and bequeath to my wife REDACTED for and during her lifetime and thereafter to my daughter REDACTED absolutely.”*

7. Probate of Mr REDACTED Will was granted on 1st June 1995 in which the last Will and testament of REDACTED was proved and registered in the District Probate Registry. The administration of all the estate was granted to the executrices, by the Court, to REDACTED and REDACTED.
8. The lands at REDACTED, which are the subject of this appeal formed part of the Estate included in the Appellant’s father’s Will.
9. By indenture dated 20th April 2001 between REDACTED (Wife) and REDACTED (Daughter) of REDACTED – the beneficiaries of the Will of the late REDACTED), REDACTED surrendered her life interest in the lands at REDACTED to REDACTED
10. A site of 1 acre, forming part of the lands at REDACTED was sold in 2005 and CGT was calculated and paid. The valuation date used to value the cost of the land was 20th April 2001.
11. A further REDACTED acres of the land at REDACTED, the subject of this appeal, was sold in October 2017.
12. Apart from the period from the date of death of Mr REDACTED to 1996 the land at REDACTED has been rented out.
13. On 20<sup>th</sup> February 2018 REDACTED acting as agent for CGT purposes, wrote to Revenue regarding the *“Potential CGT liability on part disposal of farmland at REDACTED”*. In that letter Mr REDACTED set out details of the Appellant’s acquisition of the land at REDACTED and other relevant details and requested that the Revenue *“provide advance approval for the proposed CGT farm Retirement Relief claim”*



14. On 23rd March 2018 Ms REDACTED on behalf of Revenue replied to the above letter and stated that having reviewed the documentation submitted and the relevant legislation, she was not in a position to confirm that the Appellant could avail of Retirement Relief.
15. On the 9th May 2018 the Appellant's Tax Agent, REDACTED submitted her Income Tax and CGT return for tax year 2017 via the Revenue on-line Service (ROS). The return showed that REDACTED acres of land were sold for €460,000 and that the net chargeable gain was €397,857. In the CGT Self-Assessment section of the return the chargeable gain was entered as €397,857 with the tax due of €131,292.

### **Legislation**

16. Section 547 TCA 1997 – Appendix 1
17. Section 547 TCA 1997 – Appendix 2
18. Section 549 TCA 1997 – Appendix 3
19. Section 573 TCA 1997 – Appendix 4
20. Section 576(1) TCA 1997 – Appendix 5
21. Section 577(3) TCA 1997 – Appendix 6
22. Section 577A TCA 1997 – Appendix 7
23. Section 598 TCA 1997 – Appendix 8

### **Submissions - Appellant**

#### *Valuation Date*

24. The Appellant's agent submitted that the computation of the gain should be based on the valuation of the land as of 20<sup>th</sup> April 2001 when acquired by the Appellant.



This would give a Net taxable gain of €170,846 and CGT payable of €56,379, if CGT Retirement Relief did not apply.

25. The Appellant's agent submitted that the Respondent advised him that:

*"The Revenue position is that there were two interests acquired at the same time by the two beneficiaries, a life interest followed by a remainder (future) interest. Section 573 TCA 1997 makes no distinction as to the nature of the interests taken by the beneficiaries of a deceased person's estate. Even though the daughter only had a remainder interest at the time of her father's death, nevertheless, she is treated as having acquired the property at his date of death."*

26. The Appellant's agent advised that the Appellant's tax agent at the time accepted the Respondent's view in the matter and paid the CGT due on this basis.

27. The Appellant's agent submitted his disagreement with this finding in that REDACTED owned the farm absolutely entitled, only on the transfer from her mother on 20th April 2001, by virtue of the mother surrendering her life interest on the farm.

28. The Appellant's agent submitted that the terms of the Will state: *"All the rest residue and remainder of my estate real and personal wheresoever situate of which I die seized possession or entitled or which I have power of appointment. I will devise and bequeath to my wife REDACTED for and during her lifetime and thereafter to my daughter REDACTED absolutely"* By virtue of that clause in the Will, REDACTED did not acquire the property on the date of death of her father but only on the date of death of her mother.

29. The Appellant's agent submitted that by virtue of the Deed dated 20<sup>th</sup> April 2001, whereby REDACTED released her life interest in the trust assets, i.e. the farm, REDACTED became absolutely entitled to the trust asset on the date her Mother surrendered her life interest.

30. The Appellant's agent submitted that if REDACTED had become absolutely entitled to the property on the date of death of her father, REDACTED, it would not have been necessary for REDACTED to release her life interest by the execution of a Deed dated 20<sup>th</sup> April, 2001.



31. The Appellant's agent submitted that Legatee in s.5 TCA 1997 includes any person taking under a testamentary disposition or on intestacy or partial intestacy or by virtue of the Succession Act 1965 or by survivorship whether such person takes beneficially etc.
32. The Appellant's agent submitted that REDACTED took her beneficial interest for capital gains purposes when her mother released her life interest in the trust created under the Will of REDACTED by Deed dated 20<sup>th</sup> April 2001. Section 5 TCA 1997 also defines settled property as "any property held in trust"
33. The Appellant's agent submitted that the property held under the Will of REDACTED was settled property and hence s.576 TCA 1997 applies when REDACTED became absolutely entitled to the trust property at the point when her mother released her life interest by Deed, dated 20<sup>th</sup> April 2001.

*Retirement Relief*

34. The Appellant submitted that the Respondent did not take account of her ill health and state of mind in considering her claim to retirement relief on 23<sup>rd</sup> March 2018.
35. The Appellant submitted that the medical reports, which were returned by the Respondent unopened on 23<sup>rd</sup> March 2018, set out clearly why she was unable to farm the land for the stipulated period of 10 years.
36. The Appellant submitted that a summary of the taxable income from 1991/92 to 2016 equated to an annual average income of €4,400, which indicated the existence of extraordinary circumstances.
37. The Appellant submitted that she was not in receipt of any State income during the period 1991 to 2016.
30. The Agent for the Appellant asserted, in relation to a claim for retirement relief, that the appeal is in respect of the Revenue Commissioners' determination that the provisions of s.598 "Retirement Relief" did not apply to her disposal of REDACTED acres of land at REDACTED in 2017 for €462,000, and against Revenue's decision to deem that the disposal is not a "qualifying asset" and/or a "chargeable business asset" as defined by s.598 TCA 1997.



32. The Agent for the Appellant submitted that as the land was let on conacre, the land was used for the purposes of farming carried out by REDACTED.
33. The Agent for the Appellant submitted that as the Appellant acquired the land on 20<sup>th</sup> April 2001, she owned the land for a period in excess of 10 years and as she was born on REDACTED she was aged 58 at the date of the sale.
34. The Agent submitted that it was his contention that - There is no provision in s.598 TCA 1997, that where land is owned by an individual that the individual has to be working the land for the 10 years ending with the disposal.
35. The Agent submitted that retirement relief was still available to the Appellant in her specific circumstances, even though Finance Act 2014 – s.50 (1) (b) amended s.598 of the TCA 1997 as regards disposals (on or after 1st January 2015) of business or farms on “retirement”, restricts entitlement to relief, where a letting of the land for a period of not less than 5 consecutive years commences on or before 31<sup>st</sup> December 2016.
36. The Agent submitted that the Appellant did not enter a letting agreement for more than 5 years prior to 31<sup>st</sup> December 2016 for the following reasons: -
- I. REDACTED had severe REDACTED problems as outlined in the Medical Reports as filed and the conacre arrangement, which had existed for many years, was the most appropriate arrangement in her circumstances.
  - II. As a sale of the land was contemplated prior to the 31<sup>st</sup> December 2016, it was not appropriate to create a lease of the land for a period of at least 5 years which would adversely affect the sale of the land as it would not be sold with vacant possession

### *Summary*

32. The Agent submitted that for all of the above reasons the CGT Retirement Relief should be granted to the Appellant and if not, the capital gains tax assessment for 2017 should be amended to include the market value of the farm acquired following the release of the life interest on 21<sup>st</sup> April 2001



## Submissions – Respondent

### *Valuation Date*

33. The Respondent submitted that the return (and consequent assessment to capital gains tax) as submitted, used the date that probate of the Appellant’s father’s Will was granted as the date on which she acquired her interest in the land, and consequently, valued the cost of the land sold in 2017 as of that date.
34. The Respondent submitted that the circumstances of the Appellant’s father’s Will did not create a Trust and consequently the provisions of s.576 TCA 1997 cannot be applied.
35. The Respondent submitted that under the provisions of s.573(5) TCA 1997 both the Appellant and her mother acquired “an interest” in the lands in question and that under the construction of s.573, subsections 2 and 5, they both, as legatees, acquired a different interest in the lands as and from the date of death of REDACTED. On that basis, the date of valuation of the cost of the land being sold should in fact have been the DATE REDACTED.

### *Retirement Relief*

36. The Respondent submitted that the Appellant’s appeal is in respect of the Revenue Commissioners determination that within the provisions of s.598 TCA 1997, “Retirement Relief” did not apply when calculating the CGT due on her disposal of REDACTED acres of land at REDACTED in 2017 for €462,000.
37. The Respondent submitted that if the Appellant satisfied the provisions of s.598(2)(a) TCA 1997, then there would be no CGT chargeable on the disposal of the land.
38. The Respondent submitted that it had reviewed the submissions made by the Appellant’s agent and concluded that the lands in question were not a chargeable business asset as described in s.598 (1) (a) TCA 1997 as they were not “*an asset used for the purposes of farming carried on by the individual*” (emphasis added by Respondent) because the land had been let to third parties.



39. The Respondent submitted that it is a basic requirement of s.598 that the asset in question being disposed of is a “qualifying asset”.

40. The Respondent submitted that the Appellant has not demonstrated that the disposal falls within the definition of a “qualifying asset” as set out in s.598 TCA 1997 insofar as “qualifying assets” in relation to a disposal, which includes –

- (i) *the chargeable business assets of the individual which apart from tangible moveable property he or she has owned for a period of not less than 10 years ending with the disposal and which have been his or her chargeable business assets throughout the period of 10 years ending with that disposal.*
- (iv) *land which has been let by the individual at any time in the period of 5 years ending with the disposal, where –*
  - (I) *immediately before the time the land was first let in that period, the land was owned by the individual and used for the purposes of farming carried on by the individual for a period of not less than 10 years ending at that time, and*
  - (II) *the disposal is a disposal referred to in section 652(5)(a), and*
- (v) *land which has been let by the individual at any time in the period of 25 years ending with the disposal where –*
  - (I) *immediately before the time the land was first let in that period of 25 years, the land was owned by the individual and used for the purposes of farming carried on by the individual for a period of not less than 10 years ending at that time, and*
  - (II) *the disposal is –*
    - (A) *to a child (within the meaning of section 599) of the individual*
    - (B) *to an individual, other than a child referred to in clause (A), where that disposal occurs on or before 31 December 2016, or*
    - (C) *to an individual, other than a child referred to in clause (A), provided the land was let to a person for the purposes of farming during the period of 25 years referred to in subparagraph (I) and each letting of the land was for a period of not less than 5 consecutive years;*





41. The Respondent submitted that it had reviewed the submissions made by the Appellant's agent and concluded that the lands in question were not a chargeable business asset as described in s.598 (1) (a) TCA 1997 as they were not *"an asset used for the purposes of farming carried on by the individual"* (emphasis added by Respondent) because the land had been let to third parties.
42. The Respondent noted and accepted the evidence presented, that the Appellant was unable to work the land/farm due to her health for the 10 years required by s.598 TCA 1997 and that the land had been let for grazing (on conacre) for 16 years prior to the sale of the land.
43. The Respondent submitted that there is no provision in the legislation for "mitigation" but pointed out the circumstances outlined in the Tax and Duty Manual, Disposals of Business or Farm on "retirement", Part 19-06-03 where the relief may be allowed. The circumstances under which the Revenue will consider allowing s.598 relief where the working of the farm is not for a period of 10 years are on page 17 of the manual.

They are:

1. *"Revenue will consider claims for retirement relief where an individual, due to terminal illness, is unable to satisfy the 10-year requirement, and*
2. *The Revenue Commissioners will consider claims for relief where an individual dispose of "qualifying assets" before his/her 55<sup>th</sup> birthday and where all the following conditions are present.*
  - a) *The claimant is, due to severe or chronic ill health, unable to continue farming....*
  - b) *On cessation the claimant disposes of "qualifying assets" – at the time of disposal the conditions for relief, other than the age requirement, are satisfied*
  - c) *At the time of disposal, the claimant is within 12 months of his/her 55<sup>th</sup> birthday*
  - d) *The claimant provides medical evidence of the illness and outline(s) the circumstances in which the relief is being claimed."*



44. The Respondent submitted that neither of the above circumstances are applicable in this instance. In both sets of circumstances there is a requirement that the assets being disposed of are qualifying assets in the first instance.
45. The Respondent submitted that the full circumstances of the Appellant were considered before the relief was refused to the Appellant.

## **Analysis and Findings**

### *Valuation Date*

46. The Appellant's father, REDACTED died 23<sup>rd</sup> November REDACTED, Probate was taken out on 1st June 1995 and REDACTED surrendered her life interest by deed of transfer to the Appellant on 20th April 2001.
47. Probate granted on 1st June 1995 provided "*that the administration of all the estate which devolves on and vests in the personal representative of the said deceased was granted by the Court to REDACTED Widow of the deceased and REDACTED, farmer, daughter of the deceased, the Executrices*".
48. The Executrices if in compliance with their sworn obligations to faithfully administer the Will of REDACTED, created a situation whereby REDACTED gained immediate access to her entitlement to a life interest and the Appellant gained immediate access to her benefit as remainderman entitled to the full beneficial interest in the devolved and vested estate on the death of her mother, REDACTED. No evidence or commentary was adduced by either party to suggest that the Executrices acted other than in faithfully fulfilling their sworn obligations in accordance with Probate.
49. Where a testator bequeaths a life interest in property to a beneficiary in his or her Will, that beneficiary has an entitlement to live in the property and to retain such income as arises from the property until his or her death. When that beneficiary dies, the property will then devolve on a beneficiary known as the remainderman, who will then take a full freehold interest in the property unless the Will otherwise provides. When a life tenant disclaims his or her interest, the result will be to accelerate subsequent interests, namely that of the remainderman.



50. In the instant case, the Appellant as remainderman became entitled to a full freehold interest in the property disposed of, in two tranches, as outlined in the agreed background and facts as set out in paragraphs 10 and 11 above, on the surrender of the life interest of REDACTED by indenture dated 20th April 2001.
51. I am satisfied that the property held under the Will of REDACTED was settled property at the date of the grant of Probate (1st June 1995) and that the Executrices in exercising their obligations under the Will of the Appellant's father held the property in trust. In these circumstances REDACTED became absolutely entitled to the settled property as against the Executrices when her mother irrevocably released her life interest by Deed dated 20<sup>th</sup> April 2001.
52. Section 576 TCA 1997 as amended provides that for the purposes of the CGT Acts the property is deemed to have been disposed of by the trustee and immediately reacquired by the trustee for a consideration equal to its market value.
53. It follows therefore that the provisions of s.547 and s.549 TCA 1997 deeming the acquisition by the Appellant of the property at cost and imposing market value are applicable in the instant case. I find therefore as a fact that the Appellant acquired the properties disposed as set out in paragraphs 10 and 11 above on 20th April 2001 and the correct base price for CGT purposes of these properties is the market value at that date.
54. In the absence of any evidence to the contrary I find the correct base price for the property disposed of – the subject of this appeal to be €259,547 in accordance with the allocation of costs provided by the Appellant giving rise to a CGT liability payable of €56,379, if CGT Retirement Relief does not apply.

#### *Retirement Relief*

#### *Legislative context*

55. Pursuant to TCA, s.598(2), full relief from capital gains tax is available to an individual who has attained the age of 55 years but has not attained the age of 66 years where that individual disposes of the whole or part of his or her “chargeable business assets”



constituting “*qualifying assets*” for a consideration that does not exceed €750,000. Both italicised terms are defined by TCA, s.598(1) as follows:

*“chargeable business asset means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by –*

- (i) the individual,*
- (ii) individual’s family company, or*
- (iii) a company which is a member of a trading group of which the holding company is the individual’s family company, other than an asset on the disposal of which no gain accruing would be a chargeable gain”*

*“qualifying assets” in relation to a disposal, includes*

- (i) chargeable business assets of the individual, which, apart from tangible movable property, he or she has owned for a period of not less than 10 years ending with the disposal, and which have been his or her chargeable business assets throughout the period of 10 years ending with that disposal,”*

56. In this context, the substantive issue in this appeal is whether the lands were “qualifying assets” thereby entitling the Appellant to full relief on the disposal proceeds of €462,000.

#### *Overview*

57. The agent for the Appellant submitted that as the land was let on conacre, the land was used for the purposes of farming carried on by the Appellant. The Respondent submitted that as the lands had been let to third parties the lands in question were not used for the purposes of farming carried on by the Appellant and consequently were not a chargeable business asset for the purposes of Retirement Relief.

58. To qualify for the Relief, it is necessary that there is a disposal of “qualifying assets”. The meaning of “qualifying assets” in so far as it relates to “chargeable business asset” requires that the asset must have been owned for at least 10 years



ending on the date of the disposal and must be actually in use for the entirety of the 10-year period ending on the date of the disposal. It is necessary in addition that the asset must have been used by the individual for the purposes of farming carried out by the individual.

59. No evidence was presented to suggest that the Appellant held the chargeable business asset for the purposes of farming or that immediately before the time the land was first let that the Appellant owned the land and used it for the purposes of farming.
60. In fact, it was agreed between the parties that apart from the period from the date of death of REDACTED to 1996, the land had been rented out. The Appellant as remainderman only became entitled to a full freehold interest in the lands, on the surrender of the life interest of REDACTED by indenture, dated 20th April 2001.
61. In determining the matter of exemption or not from CGT in this case I have considered the issues raised in relation to the correct interpretation of Revenue statutes in the decision of Murphy J in Ó Coindealbháin –v- Gannon [1986] I.R. 154, where he stated: -

*“The principles of legal interpretation to be applied to the construction of revenue statutes are well established. It is a general principle that to be liable to tax the citizen must come clearly within the words of the charge to tax. On the other hand, once within the scope and terms of the charge to tax, he cannot escape unless clearly within the terms of an exemption. There is no rule of law against the citizen making genuine and lawful arrangements of his affairs by which the incidence of tax on his property is lessened. In the construction of a Taxing Act the court has primary regard to the statutory words themselves and to their proper judicial construction. Particular words must be construed in their context. Taxing Acts are to be construed strictly, in the sense that one has to look merely at what was clearly said, there being no room for any intendment, but a fair and reasonable construction must be given to the language without leaning to one side or the other. Whether applying the terms of the charge or the terms of the exemption, no considerations of equity or hardship affect the construction of the Act...”*



62. In considering whether retirement relief from CGT applies, to the consideration for the disposal of the lands the subject of this appeal, satisfies, the requirements for relief, I must have regard to the decision of Kennedy CJ in Commissioners of Inland Revenue –v Doorley [1933] 1 I.R. 750, where he stated:

*“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, excepts 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 applicable.”*

#### *Burden of Proof*

61. In *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, Charleton J. confirmed that the burden of proof in relation to a tax appeal where at paragraph 22 he said:

*“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.”*

62. However contrary to that obligation, the Appellant failed to provide any evidence that the lands were used by her *“for the purposes of farming”*.

#### **Determination**

63. Based on a consideration of the evidence and the submissions, I have found that:

- A. The correct base price for the property disposed of – the subject of this appeal to be €259,547 in accordance with the allocation of costs provided by the Appellant giving rise to a CGT liability payable of €56,379. The assessment to CGT for 2017 should be amended accordingly and any excess CGT should be repaid to the Appellant.
- B. The Appellant is not entitled to Retirement Relief in respect of the property disposed of – the subject of this appeal.



64. This appeal is determined in accordance with s.949AK TCA 1997.

---

**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**12 AUGUST 2020**



## Appendix 1

### Section 547 Disposals and acquisitions treated as made at market value

*(1) Subject to the Capital Gains Tax Acts, a person's acquisition of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where –*

*(a) the person acquires the asset otherwise than by means of a bargain made at arm's length (including in particular where the person acquires it by means of a gift),*

*(b) the person acquires the asset by means of a distribution from a company in respect of shares in the company, or*

*(c) the person acquires the asset wholly or partly –*

*(i) for a consideration that cannot be valued,*

*(ii) in connection with the person's own or another person's loss of office or employment or diminution of emoluments, or*

*(iii) otherwise in consideration for or in recognition of the person's or another person's services or past services in any office or employment or of any other service rendered or to be rendered by the person or another person.*

*[(1A) (a) Notwithstanding subsection (1), where, by virtue of section 31 of the State Property Act, 1954, the Minister for Finance waives, in favour of a person, the right of the State to property, the person's acquisition of the property shall for the purposes of the Capital Gains Tax Acts be deemed to be for a consideration equal to the amount (including a nil amount) of the payment of money made by the person as one of the terms of that waiver.]*

*(2) (a) In this subsection, "shares" includes stock, debentures and any interests to which section 587(3) applies and any option in relation to such shares, and references in this subsection to an allotment of shares shall be construed accordingly.*

*(b) Notwithstanding subsection (1) and section 584(3), where a company, otherwise than by means of a bargain made at arm's length, allots shares in the company (in this subsection referred to as "the new shares") to a person connected with the company, the consideration which the person gives or becomes liable to give for the new shares shall for the purposes of the Capital Gains Tax Acts be deemed to be an amount (including a nil amount) equal to the lesser of –*





*(i) the amount or value of the consideration given by the person for the new shares, and*

*(ii) the amount by which the market value of the shares in the company which the person held immediately after the allotment of the new shares exceeds the market value of the shares in the company which the person held immediately before the allotment or, if the person held no such shares immediately before the allotment, the market value of the new shares immediately after the allotment.*

*(3) Subsection (1) shall not apply to the acquisition of an asset where –*

*(a) there is no corresponding disposal of the asset, and*

*(b) (i) there is no consideration in money or money's worth for the asset, or*

*(ii) the consideration for the asset is of an amount or value which is lower than the market value of the asset.*

*(4) (a) Subject to the Capital Gains Tax Acts, a person's disposal of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where –*

*(i) the person disposes of the asset otherwise than by means of a bargain made at arm's length (including in particular where the person disposes of it by means of a gift), or*

*(ii) the person disposes of the asset wholly or partly for a consideration that cannot be valued.*

*(b) Paragraph (a) shall not apply to a disposal by means of a gift made before the 20th day of December, 1974, and any loss incurred on a disposal by means of a gift made before that date shall not be an allowable loss.*



## Appendix 2

### Section 549 Transactions between connected persons

*(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset.*

*(2) Without prejudice to the generality of section 547, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length.*

*(3) Where on the disposal a loss accrues to the person making the disposal, the loss shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1), being a disposal made at a time when they are connected persons.*

*(4) Subsection (3) shall not apply to a disposal by means of a gift in settlement if the gift and the income from it are wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.*

*(5) Where the asset mentioned in subsection (1) is an option to enter into a sale or other transaction given by the person making the disposal, a loss accruing to a person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person not connected with the person acquiring the asset.*

*[(6) Where the asset mentioned in subsection (1) is subject to any right or restriction enforceable by the person making the disposal or by a person connected with that person, then that market value shall, where the amount of the consideration for the acquisition is in accordance with subsection (2) deemed to be equal to the market value of the asset, be what its market value would be if not subject to the right or restriction, reduced—*

*(a) by the lesser of—*

*(i) the market value of the right or restriction, and*

*(ii) the amount by which its extinction would enhance the value of the asset to its owner, or*



*(b) by the market value of the right or restriction, where the market value referred to in paragraph (a)(i) and the amount referred to in paragraph (a)(ii) are equal.*

*(7) Where the right or restriction referred to in subsection (6), –*

*(a) is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with that person,*

*(b) is an option or other right to acquire the asset, or*

*(c) in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise,*

*then, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.*

*[(7A) (a) This subsection applies where the asset mentioned in subsection (1) is subject to any right or restriction enforceable by the person making the disposal or by the person connected with that person, and the market value of the asset at the date of its acquisition (without reference to any right or restriction) is greater than the consideration, in money or money's worth, given in payment for that asset.*

*(b) Where, on a subsequent disposal of an asset to which paragraph (a) applies by the person who acquired that asset, subsection (7) has the effect (without taking account of this subsection) of—*

*(i) increasing a loss, or*

*(ii) substituting a loss for a gain,*

*then that subsection shall not apply.]*

*(8)(a) Where a person disposes of an asset to another person in such circumstances that –*

*(i) subsection (7) would but for this subsection apply in determining the market value of the asset, and*

*(ii) the person is not chargeable to capital gains tax under section 29 or 30 in respect of any gain accruing on the person's disposal of the asset,*

*then, as respects any subsequent disposal of the asset by the other person, that other person's acquisition of the asset shall for the purposes of the Capital Gains Tax Acts be*



*deemed to be for an amount equal to the market value of the asset determined as if subsection (7) had not been enacted.*

*(b) This subsection shall apply –*

*(i) to disposals made on or after the 25th day of January, 1989, and*

*(ii) for the purposes of the determination of any deduction to be made from a chargeable gain accruing on or after the 25th day of January, 1989, in respect of an allowable loss, notwithstanding that the loss accrued or but for this section would have accrued on a disposal made before that day.*

*(9) Subsections (6) and (7) shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, or to any right or restriction under a mortgage or other charge.*



## Appendix 3

### Section 573 Death

*(1) In this section, references to assets of which a deceased person was competent to dispose are references to assets of the deceased which the deceased could if of full age and capacity have disposed of by will, assuming that all the assets were situated in the State and that the deceased was domiciled in the State, and include references to the deceased's severable share in any assets to which immediately before his or her death he or she was beneficially entitled as a joint tenant.*

*(2) For the purposes of the Capital Gains Tax Acts, the assets of which a deceased person was competent to dispose –*

*(a) shall be deemed to be acquired on his or her death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death; but*

*(b) shall not be deemed to be disposed of by him or her on his or her death (whether or not they were the subject of a testamentary disposition).*

*(3) Allowable losses sustained by an individual in the year of assessment in which he or she dies may, in so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year, and there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to this subsection.*

*(4) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence and domicile at the date of death.*

*(5) Where any asset is acquired by a person as legatee no chargeable gain shall accrue to the personal representatives, but the legatee shall be treated as if the personal representatives' acquisition of the asset had been the legatee's acquisition of the asset.*

*(6) Where not more than 2 years, or such longer period as the Revenue Commissioners may by notice in writing allow, after a death any of the dispositions of the property of which the deceased was*



*competent to dispose, whether effected by will or under the law relating to intestacies or otherwise, are varied by a deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of the Capital Gains Tax Acts.*



## Appendix 4

### **Section 576(1) Person becoming absolutely entitled to settled property**

*(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, all the assets forming part of the settled property to which the person becomes so entitled shall be deemed for the purposes of the Capital Gains Tax Acts to have been disposed of by the trustee, and immediately reacquired by the trustee in the trustee's capacity as a trustee within section 567(2), for a consideration equal to their market value.*

### **Section 577(3) Termination of life interest on death of person entitled**

*(3) On the termination of a life interest in possession in all or any part of settled property, the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of the Capital Gains Tax Acts at that time to be disposed of by the trustee, and immediately reacquired by the trustee, for a consideration equal to the whole or a corresponding part of the market value of the asset.*

### **577A Relinquishing of a life interest by the person entitled**

*[Where by virtue of section 576(1) the assets forming part of any settled property are deemed to be disposed of and immediately reacquired by the trustee on the occasion when a person becomes absolutely entitled to the assets as against the trustee, then, in case that occasion is the relinquishing of a life interest (within the meaning of section 577) by the person entitled to that interest, the trustee shall be given such relief as would be given under sections 598 and 599 to the person who relinquished the life interest –*

*(a) if the person had become absolutely entitled to the assets as against the trustee at the commencement of the life interest and had continued to be so entitled throughout the period (in this section referred to as the "life interest period") that the life interest subsisted, and*

*(b) as if any expenditure of the kind referred to in paragraph (b) of section 552(1) that was incurred on the assets during the life interest period by the trustee had been incurred by the person.]*



## Appendix 5

### 598 Disposals of business or farm on “retirement”

*(1)(a) In this section and in section 599 –*

*[“certificate” has the same meaning as it has for the purposes of Regulation 8(8)(c)(ii) of the European Communities (Milk Quota) Regulations 2000 (S.I. No. 94 of 2000) as amended or extended from time to time;]<sup>1</sup>*

*“chargeable business asset” means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by –*

*(i) the individual,*

*(ii) the individual’s family company, or*

*(iii) a company which is a member of a trading group of which the holding company is the individual’s family company,*

*other than an asset on the disposal of which no gain accruing would be a chargeable gain;*

*“family company”, in relation to an individual, means, subject to paragraph (b), a company the voting rights in which are –*

*(i) as to not less than 25 per cent, exercised by the individual, or*

*(ii) as to not less than 75 per cent, [exercisable by the individual, his or her civil partner, a member of the individual’s family, or a member of the family of the civil partner of the individual, and,] as to not less than 10 per cent, exercisable by the individual himself or herself;*

*[“family of the civil partner”, in relation to an individual, means any brother, sister, ancestor or lineal descendant of the civil partner;]*

*“family”, in relation to an individual, means the husband or wife of the individual, and a relative of the individual or of the individual’s husband or wife, and “relative” means brother, sister, ancestor or lineal descendant;*

*[“farm partnership” means a milk production partnership or a registered farm partnership (within the meaning of section 667C);]*





*“full-time working director” means a director required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity;*

*“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent subsidiaries;*

*[“milk production partnership” has the meaning assigned to it by the European Communities (Milk Quota) Regulations 2000 (S.I. No. 94 of 2000) as amended or extended from time to time;*

*“payment entitlement” has the same meaning as it has for the purposes of [Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013]]*

*“qualifying assets”, in relation to a disposal, includes –*

*[(i) the chargeable business assets of the individual which apart from tangible moveable property he or she has owned for a period of not less than 10 years ending with the disposal and which have been his or her chargeable business assets throughout the period of 10 years ending with that disposal,]*

*[[~~(ii)~~(I) the shares or securities, which the individual has owned for a period of not less than 10 years ending with the disposal, being shares or securities of a relevant company that is a company—*

*(A) which has been a trading company, or a farming company, and the individual’s family company, or*

*(B) which has been a member of a trading group, of which the holding company is the individual’s family company,*

*during a period of not less than 10 years ending with the disposal and the individual has been a working director of the relevant company for a period of not less than 10 years during which period he or she has been a fulltime working director of the relevant company for a period of not less than 5 years, and*

*(II) land, machinery or plant (if any) which the individual has owned for a period of not less than 10 years ending with the disposal, and which—*

*(A) was used throughout that period for the purposes of the relevant company, and*



*(B) is disposed of at the same time and to the same person as the shares or securities referred to in subparagraph (I),*

*[(iia) payment entitlements, where they are disposed of at the same time and to the same person as land to the extent that the land would support a claim to payment in respect of those payment entitlements,]*

*(iii) land used for the purposes of farming carried on by the individual which he or she has owned and used for that purpose for a period of not less than 10 years ending with the transfer of an interest in that land for the purposes of complying with the terms of the Scheme, [...]*

*(iv) land which has been let by the individual at any time in the period of 5 years ending with the disposal, where—*

*(I) immediately before the time the land was first let in that period, the land was owned by the individual and used for the purposes of farming carried on by the individual for a period of not less than 10 years ending at that time, and*

*(II) the disposal is a disposal referred to in [section 652(5)(a), and]]*

*[(v) land which has been let by the individual at any time in the period of 25 years ending with the disposal where—*

*(I) immediately before the time the land was first let in that period of 25 years, the land was owned by the individual and used for the purposes of farming carried on by the individual for a period of not less than 10 years ending at that time, and*

*(II) the disposal is—*

*(A) to a child (within the meaning of section 599) of the individual,*

*(B) to an individual, other than a child referred to in clause (A), where that disposal occurs on or before 31 December 2016, or*

*(C) to an individual, other than a child referred to in clause (A), provided the land was let to a person for the purposes of farming during the period of 25 years referred to in subparagraph (I) and each letting of the land was for a period of not less than 5 consecutive years;]*

*["the Scheme" means the scheme known as –*



*(i) the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture and Food for the purpose of implementing Council Regulation (EEC) No. 2079/92 of 30 June 1992, [...]*

*(ii) the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture, Food and Rural Development for the purpose of implementing Council Regulation (EC) No. 1257/1999 of 17 May 1999,] [or]*

*[(iii) the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture and Food for the purpose of implementing Council Regulation (EC) No. 1698/2005 of 20 September 2005;]*

*“trade”, “farming”, “profession”, “office” and employment” have the same meanings respectively as in the Income Tax Acts;*

*“trading company” means a company whose business consists wholly or mainly of the carrying on of one or more trades or professions;*

*“trading group” means a group of companies consisting of the holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions;*

*“75 per cent subsidiary” has the meaning assigned to it by section 9.*

*(b) For the purposes of the definition of “family company”, where a company which is a holding company would not but for this paragraph be an individual’s family company, but would be such a company if the individual had not at any time on or after the 6th day of April, 1987, and before the 6th day of April, 1990, disposed of shares in the company to a child (within the meaning of section 599) of the individual, the company shall be deemed to be the individual’s family company.*

*(c) In this section, references to the disposal of the whole or part of an individual’s qualifying assets include references to the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the individual exercising that office or employment.*

*(d) For the purposes of the definition of “qualifying assets”, there shall be taken into account –*

*[(i) (I) the period of ownership of an asset by a [spouse or civil partner] of an individual as if it were a period of ownership of the asset by the individual, and*

*(II) where a [spouse or civil partner] of an individual has died, the period of use of an asset by the [spouse or civil partner] as if it were a period of use of the asset by the individual,]*



*(ii) where the chargeable business assets are new assets within the meaning of section 597, the period of ownership of the old assets as if it were a period of ownership of the new assets,*

*[(iia) the period for which an individual was a director or, as the case may be, a full-time working director of the following companies as if it were a period for which the individual was a director of a “relevant company” (which, for the purposes of this subparagraph, means a company referred to in paragraph (ii) of the definition of qualifying assets in subsection (1)(a)):*

*(I) a company that was treated as being the same company as the relevant company for the purposes of section 586,*

*(II) a company involved in the same scheme of reconstruction or amalgamation under section 587 with the relevant company,]*

*[(iib) the period of use of land by an individual as a partner in a [farm partnership] as if it were also a period of use by the [spouse or civil partner] of the individual where the [spouse or civil partner] —*

*(I) is a co-owner of the land,*

*(II) used the land for a period ending on the date the [farm partnership] commenced, and*

*(III) was issued with a certificate by the Minister for Agriculture and Food,]*

*(iii) where the qualifying assets are shares or securities in a family company to which section 600 applies, the period immediately before the transfer to the company of chargeable business assets during which those assets were owned by the individual as if it were a period of ownership of the individual of the qualifying assets or a period throughout which he or she was a full-time working director, as may be appropriate, and*

*(iv) a period immediately before the death of the [spouse or civil partner] of the individual throughout which the deceased was a full-time working director as if it were a period throughout which the individual was a full-time working director.*

*[(e) For the purposes of paragraph (v)(II)(C) in the definition of “qualifying assets”, land let under one or more than one conacre agreement before 31 December 2016 shall not affect entitlement to relief under this section, where a letting of the land for a period of not less than 5 consecutive years commences on or before 31 December 2016.]*



*[(2) (a) Subject to this section, where an individual who has attained the age of 55 years but has not attained the age of 66 years disposes of the whole or part of his or her qualifying assets, then—*

*(i) if the amount or value of the consideration for the disposal does not exceed €750,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;*

*(ii) if the amount or value of the consideration for the disposal exceeds €750,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and €750,000.*

*(b) Subject to this section, where an individual who has attained the age of 66 years disposes of the whole or part of his or her qualifying assets on or before 31 December 2013, then—*

*(i) if the amount or value of the consideration for the disposal does not exceed €750,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;*

*(ii) if the amount or value of the consideration for the disposal exceeds €750,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and €750,000.*

*(c) Subject to this section, where an individual who has attained the age of 66 years disposes of the whole or part of his or her qualifying assets on or after 1 January 2014, then—*

*(i) if the amount or value of the consideration for the disposal does not exceed €500,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;*

*(ii) if the amount or value of the consideration for the disposal exceeds €500,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and €500,000.*

*(d) For the purposes of paragraphs (a), (b) and (c), the amount of capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.]*



*(3) For the purposes of subsection (2), the consideration on the disposal of qualifying assets by the individual shall be aggregated, and nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets.*

*[(3A) Where compensation has been received by a person under the scheme for compensation in respect of the decommissioning of fishing vessels implemented by [the Minister for Agriculture, Food and the Marine in accordance with Regulation (EU) No. 508/2014 of the European Parliament and of the Council of 15 May 2014], relief under subsection (2) shall apply as if the period referred to in paragraph (i) of the definition of ‘qualifying assets’ in subsection (1)(a) were 6 years and the age referred to in subsection (2) were 45 years.]*

*(4) Where a disposal of qualifying assets includes a disposal of shares or securities of the individual’s family company, the amount of the consideration to be taken into account for the purposes of subsection (2) in respect of those shares or securities shall be the proportion of the consideration for those shares or securities which is equal to –*

*(a) in a case where the individual’s family company is not a holding company, the proportion which the part of the value of the company’s chargeable assets at the time of the disposal which is attributable to the value of the company’s chargeable business assets bears to the whole of that value, and*

*(b) in a case where the individual’s family company is a holding company, the proportion which the part of the value of the chargeable assets of the trading group (excluding shares or securities of one member of the group held by another member of the group) at the time of the disposal which is attributable to the value of the chargeable business assets of the trading group bears to the whole of that value;*

*but nothing in this section shall affect liability on any gains calculated by reference to the balance of the consideration for the disposal of those shares or securities.*

*(5) For the purposes of subsection (4), every asset shall be a chargeable asset except one on the disposal of which by the company or a member of the trading group, as the case may be, at the time of the disposal of the shares or securities, no gain accruing to the company or member of the trading group, as the case may be, would be a chargeable gain.*

*(6)(a) The total of the amounts of relief given under this section for any year of assessment and all years of assessment before such year shall not exceed such amount as would reduce the total amount of capital gains tax chargeable for all those years of assessment below the amount which would be chargeable if the disposals of qualifying assets had all been made in the year of assessment.*



*(b) Where at any time the relief given under this section exceeds the amount of relief which would be given if the disposals of qualifying assets for the year of assessment and all years of assessment before such year had been made in the year of assessment, any necessary adjustment may be made [by means of assessment or amended assessment] [...] after the end of the year of assessment in which the last of such disposals is made.*

*(c) For the purposes of this subsection, [a disposal of qualifying assets other than a disposal of the whole of such assets, by a husband to a wife or by a wife to a husband, or by an individual to his or her civil partner, shall, notwithstanding section 1028(5) or section 1031M(5), as the case may be,] be taken into account at the market value of the assets.*

*(7) Subsection (2) shall apply where under section 583 an individual is treated as disposing of interests in shares or securities of his or her family company in consideration of a capital distribution from the company (not being a distribution consisting of chargeable business assets) in the course of dissolving or winding up the company as it applies where he or she disposes of shares or securities of the company.*

*[(7A) (a) In this subsection “relevant payment” means a payment made by a company on the redemption, repayment or purchase of its own shares which, by virtue of section 176, is not treated as a distribution for the purposes of Chapter 2 of Part 6.*

*(b) Subsection (2) shall apply where an individual disposes of shares in his or her family company and receives a relevant payment in exchange for that disposal.]*

*[(8) This section shall not apply to a disposal of qualifying assets unless it is shown that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is the avoidance of liability to tax.]*

