127TACD2021

[redacted]

APPELLANT

V

THE REVENUE COMMISSIONERS

RESPONDENT

DETERMINATION

Introduction

1. This is an appeal against a capital gains tax (CGT) assessment raised on the Appellant in respect of a disposal of land arising from a county council CPO (Disposal B). In June 2007 the CPO acquired a part of the Appellant's farmlands together with the Appellant's dwelling in order to facilitate the construction of a motorway. (What remained were two tranches of agricultural land either side of the proposed motorway, one being approximately 25 acres containing the farmyard and the other being 42 acres of agricultural land. These two tranches of land were disposed of in June 2007 (Disposal A). No "roll-over" relief is being sought in respect of Disposal A and as a result, in this respect, Disposal A does not form part of the matters in dispute in this appeal.)

2. The Appellant purchased a new property consisting of agricultural land and a dwelling house in March 2007.

3. An assessment to CGT was raised on 11 April 2012 in relation to the land disposal associated with the CPO. The Appellant has appealed the assessment on the basis that he is entitled to claim roll over relief under Sections 535 and 536 TCA 1997 in relation to some of the CPO proceeds because of his acquisition of the new property.

4. This Appeal was heard by remote hearing on [redacted] May 2021 before the Tax Appeals Commission.

Background

5. The Appellant is a farmer who formerly held approximately 30.7 hectares (77.85 acres) of farmland in [redacted] which was disposed of in its entirety in June 2007. The Appellant carried on dry stock farming carrying suckle cows, cattle and sheep. In or about 11th June 2007 the Appellant and his wife entered into an agreement with [redacted] County Council ("Council") to transfer 3.8 hectares (9.6 acres) of land held at [redacted] to the Council on foot of a Compulsory Purchase Order ("CPO") for the purpose of building an addition to the [redacted] roadway and received the sum of €1,300,000 in compensation ("Disposal B"). A residential home was situate on the land subject to the CPO.

6. On 1st June 2007 the Appellant and his wife entered into a separate contract for sale with [redacted] for the sale of the remaining two plots of land measuring approximately 17.3 hectares (42.7 acres) and 9.6 hectares (23.7 acres) respectively for consideration of an additional €1,300,000 ("Disposal A").

7. Prior to the above Disposals, by contract of sale dated 27 March 2007 the Appellant purchased a 19 hectare (47 acre) farm and residential house in [redacted] for €1,050,000.

8. The Appellant paid preliminary Capital Gains Tax (CGT) of €270,000 on 8th January 2008 but failed to submit a CGT return prior to the 2007 tax year filing deadline.

9. The Revenue Commissioners commenced a desk audit on 22nd February 2012 and issued a CGT assessment to the Appellant on 11 April 2012 in the amount of €417,368, inclusive

of the 10% late filing surcharge. Principal Private Residence (PPR) relief was included in this calculation with the residence and garden valued at €300,000.

10. On 2 May 2012, the Appellant's previous tax agent submitted a CGT computation to Revenue, showing a CGT liability of €282,376. The residence and garden were valued at €725,000 in this computation. As this was not accepted by the Respondent, the previous tax agent submitted an appeal to the Revenue Commissioner's, under the old appeals process and enclosed a cheque for the balance of the €282,376 in the amount of €12,367.

11. On 5 October 2012 the Appellant appointed the current tax agent. This agent agreed a valuation of €500,000 for the residence and garden with the Respondent. Prior to the finalisation of the Form AH1 the tax agent submitted a CGT computation to the Respondent showing a CGT liability of €229,662. This CGT computation includes the PPR relief at the agreed valuation of €500,000 and includes "Reinvestment relief" on a portion of the proceeds of sale of Disposal B in the amount of €584,000 on the basis that the Appellant qualifies for relief pursuant to S.536 TCA97.

12. The Appellant's reinvestment relief claim is based on a valuation provided by an Agricultural Consultant, [redacted]. The consultant stated that:

"Compensation was agreed with [redacted] County Council in 2006. The agreed figure of compensation was €1,300,000. This figure was broken down as follows:

		€
1	Dwelling house and 1 acre	500,000
2	Loss of Lands – 8.402 acres	168,000
3	Goodwill payment – 9.402 acres @ €5,000/acre	47,100

4	Temporary Disturbance	25,000
5	Injurious Affection	559,900
	Total	1,300,000

13. The Office of the Appeal Commissioners received a copy of the Form AH1 from the Respondent on 22 October 2015. The Grounds for Appeal as stated by the Appellant were as follows:

"The assessment does not take into account the various headings that Capital Gains Tax can be assessed on the CPO is assessed under. The assessment incorporates the full gain where certain gains may be able to be liable to relief by being treated as compensation. That the assessment as issued is not in line with the computation as submitted by IFAC."

14. The Point(s) at Issue per the Form AH1 were as follows:

Whether that part of the proceeds received under a CPO and termed 'compensation' for the devaluation of the land is taxable under S.535 (2)(a)(i) TCA 1997 and is then relieved under S.536 (1)(a) on election by the taxpayer where the capital sum has been applied in restoring the asset.

15. The Respondent's position as per the AH1 is as follows:

Where a CPO takes place, that the payment is usually termed compensation and may indeed contain different strands to reflect the manner in which the property owner's interest in the land has been reduced, nonetheless the compensation is ultimately a payment for and based on the land that has been acquired under the CPO.

16. The 'Point at Issue' set out in the AH1, refers only to the question of whether the 'compensation' received qualifies for relief under S.536 (1)(a). A precondition of this

section is that the capital sum received is derived from an asset which is not lost or destroyed, in accordance with S.535 (2)(a).

17. Subsequent to the hearing held at the TAC, the parties were also in dispute regarding the disposal costs, original base costs and enhancement expenditure of the assets disposed. Following a direction given by me the parties came to an agreement on the disposal costs, original base costs and enhancement expenditure which may be included in the CGT computation of the Appellant for 2007.

Legislation

18. Section 535 TCA 1997 – Disposals where capital sums derived from assets

(1) In this section, "capital sum" means any money or money's worth not excluded from the consideration taken into account in the computation of the gain under Chapter 2 of this Part.

(2) (a) Subject to sections 536 and 537(1) and to any other exceptions in the Capital Gains Tax Acts, there shall be for the purposes of those Acts a disposal of an asset by its owner where any capital sum is derived from the asset notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph shall apply in particular to –

> *(i) capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset,*
>
> *(ii) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset,*
>
> *(iii) capital sums received in return for forfeiture or surrender of a right or for refraining from exercising a right, and*
>
> *(iv) capital sums received as consideration for use or exploitation of an asset.*

(b) Without prejudice to paragraph (a)(ii) but subject to paragraph (c), neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue, and in this paragraph "policy of insurance" does not include a policy of assurance on human life.

(c) Paragraph (b) shall not apply where the right to any capital sum within paragraph (a)(ii) is assigned after the event giving rise to the damage or injury to, or the loss or depreciation of, an asset has occurred, and for the purposes of the Capital Gains Tax Acts such an assignment shall be deemed to be a disposal of an interest in the asset concerned.

19. Section 536 TCA 1997 – Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases.

(1) (a) Subject to paragraph (b), where the recipient so claims, receipt of a capital sum within subparagraph (i), (ii), (iii) or (iv) of section 535(2)(a) derived from an asset which is not lost or destroyed shall not be treated as a disposal of the asset if –

(i) the capital sum is wholly applied in restoring the asset, or

(ii) the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum;

but, if the receipt is not treated as a disposal, all sums which, if the receipt had been so treated, would have been taken into account as consideration for that disposal in the computation of a gain accruing on the disposal shall be deducted from any expenditure allowable under Chapter 2 of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(b) Paragraph (a) shall not apply to cases within subparagraph (ii) of that paragraph if immediately before the receipt of the capital sum there is no expenditure attributable to the asset under paragraphs (a) and (b) of section 552(1) or if the consideration for the

part disposal deemed to be effected on receipt of the capital sum exceeds that expenditure.

(2) Where an asset is lost or destroyed and a capital sum received as compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is, within one year of receipt or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if –

(a) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrued to such owner, and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under paragraph (a).

(3) A claim shall not be made under subsection (2) if part only of the capital sum is applied in acquiring the new asset; but, if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if –

(a) the amount of the gain so accruing were reduced to the amount of that part of the capital sum not applied in acquiring the new asset (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a).

(4) This section shall not apply in relation to a wasting asset.

20. Section 604 TCA 1997 – Disposals of principal private residence

(2) This section shall apply to a gain accruing to an individual on the disposal of or of an interest in –

> *(a)a dwelling house or part of a dwelling house which is or has been occupied by the individual as his or her only or main residence, or*
>
> *(b)land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the site of the dwelling house) not exceeding one acre;*
>
> *but, where part of the land occupied with a residence is and part is not within this subsection, then, that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.*

(3) The gain shall not be a chargeable gain if the dwelling house or the part of a dwelling house has been occupied by the individual as his or her only or main residence throughout the period of ownership or throughout the period of ownership except for all or any part of the last 12 months of that period.

(4) Where subsection (3) does not apply, such portion of the gain shall not be a chargeable gain as represents the same proportion of the gain as the length of the part or parts of the period of ownership during which the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence, but inclusive of the last 12 months of the period of ownership in any event, bears to the length of the period of ownership.

(5)(a) In this subsection, "period of absence" means a period during which the dwelling house or part of a dwelling house was not the individual's only or main residence and throughout which he or she had no residence or main residence eligible for relief under this section.

> *(b) For the purposes of subsections (3) and (4) –*

(i) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the State, and

(ii) in addition, any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling house or the part of a dwelling house in consequence of the situation of the individual's place of work or in consequence of any condition imposed by the individual's employer requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of the employee's duties,

shall be treated as if in that period of absence the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence if both before and after the period the dwelling house (or the part in question) was occupied by the individual as his or her only or main residence.

(6) Where the gain accrues from the disposal of a dwelling house or part of a dwelling house part of which is used exclusively for the purposes of a trade, business or profession, the gain shall be apportioned and subsections (2) to (5) shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

Case Law:

Terence Chadwick and Sheelagh Davis Goff v Fingal County Council (SC No 407 0f 2003).
Bookfinders Ltd v Revenue Commissioners (SC 2020)
McGregor (Inspector of Taxes) v Adcock (1977) 1 WLR 864
Revenue Commissioners v Doorley (1933) IR 750
Saatchi and Saatchi Advertising (1999) 2 IR

MATERIAL FINDINGS OF FACT

21. Based on testimony, coupled with the documents and submissions presented before me by both the Appellant and the Respondent, I have established the following material findings of fact.

22. The Appellant and his wife held land measuring approx. 30.7 hectares which included a residential home. In June 2007, the Council acquired 3.8 hectares of the land by way of CPO to construct a motorway. The Appellant and his wife received compensation of Euro 1.3 Million.

23. CPO proceeds were analysed on 22 May 2014 by [redacted], as expert agricultural valuers, as follows:

CPO Proceeds	€
Exempt House and Garden	500,000
Loss of land	168,000
Goodwill payment	47,100
Temporary Disturbance	25,000
Injurious Affection	559,900
	1,300,000

24. On 27 March 2007 the Appellant purchased a 19 hectare farm and residential house in another county for Euro 1.05 Million.

APPELLANT'S SUBMISSIONS

25. The Appellant submits that as a result of the Compulsory Purchase Order (CPO) on his residence and 9 acres of land (Disposal B), his remaining land was split into two separate parcels. The Appellant was left with no dwelling house and two parcels of land which

were now separated from the farmyard and all the required sheds and machinery storage. As a result the remaining farmland was no longer a viable farming enterprise.

26. The Appellant submits that part of the proceeds received on Disposal B (€584,900) was compensation for '*injury to a capital asset owned and maintained by the Appellant, namely the ability to farm the land commercially'*. As all of these funds were reinvested in the acquisition of a new farming enterprise, the Appellant should qualify for relief under S.536 TCA97. In the alternative, the Appellant submits that where the 'operation of a viable farming enterprise is not a chargeable asset' the compensation funds are outside the scope of CGT.

27. In response to the Respondent's contention that the proceeds of the 'CPO all derived from the assets to which the CPO referred, i.e. the Dwelling House and 8.402 acres', the Appellant submits that compensation for disturbance is not based directly on the value of the land and therefore 'the compensation must refer to a separate asset and as such Section 535 TCA97 must apply to this amount or otherwise the compensation is outside the scope of the Capital Gains Tax Acts'.

28. The Appellant further submits that the land not disposed of as part of the CPO was sold at the average market value of land in the area which suggests that the compensation received was not for the devaluing of the land and therefore the compensation received for injurious affection does not derive from the land but from some other asset.

29. The Appellant summarised his argument in his Outline of Arguments as follows:

> *"It is therefore our contention that the Appellant received compensation for injurious affection deriving from the negative impact the CPO had on his ability to continue farming in a commercially viable manner. It is our opinion that this compensation of €559,900 (* Note that later the Temporary Disturbance compensation of euro 25,000 was added to make a claim of euro 584,900*) is a capital sum which Section 535 applies*

and as such, once the conditions under Section 536 are satisfied, can avail of the relief referred to under Section 536."

RESPONDENT'S SUBMISSIONS

30. The Respondent submits that the Appellant is not entitled to relief pursuant to sections 535 and 536.

31. The Respondent submits that "*the compensation received on foot of the CPO is not a capital sum derived from an asset. While the payment is termed compensation, it is, nonetheless, payment for the land that has been acquired on foot of the CPO". Further, the asset was not "lost, destroyed or dissipated" for the purpose of section 535 (2)(a)(i). On that basis the Appellant is not entitled to relief in section 536 where in certain circumstances capital sums received from assets are not treated as disposals."*

32. The Respondent stated that:

"It is Revenue's submission that "the asset" in this case is the 9.7 hectares of land disposed of to the Council which has not been destroyed or lost. Rather the land has effectively been sold without the Appellant having much choice in the matter. The land is still in use and still exists albeit for a different purpose. Further, in determining whether or not there is a capital sum derived from an asset, consideration must be given to the fact that an asset has been acquired by the person paying the capital sum, being the Council. Section 535(2)(a) uses the terminology "notwithstanding that no asset is acquired by the person paying the capital sum" which suggests that there is no requirement to acquire an asset on foot of the payment for this to apply however, it must follow that if the asset is acquired then it cannot be taken to be lost or destroyed."

33. The Respondent also submitted that:

"While Revenue do not agree that there is a capital sum derived from an asset it is submitted that the timeline of the acquisition of the new property and disposal of the old property further prevents the Appellant from relying on this section. Section 536(2) is clear in that it refers to restoring the asset within one year of receipt of the capital sum. It is submitted that this one year can only start running once the capital sum is received; there is not logic in seeking to apply a capital sun received to restore an asset lost or destroyed in advance of actually receiving the capital sum."

34. The Respondent concluded their Outline of Arguments as follows:

"In applying this logic to the present circumstances it is submitted that the Appellant cannot establish in clear and unambiguous terms that he is entitled to the relief sought. The compensation received is not a capital sum derived from an asset. Insofar as it is suggested that it is, the Appellant is not entitled to the relief sought because "the asset" in question has not been lost or destroyed. Finally, even if the Tax Appeals Commissioner is not with Revenue on both of those points, the compensation received was not applied to restoring that asset "within one year" for the purpose of section 536."

ANALYSIS & CONCLUSIONS

35. S.536 (1) provides relief for a capital sum derived from an asset which is not lost or destroyed and the capital sum is applied in restoring the asset. The qualification for relief under S.536 (1) TCA97 is subject to a taxpayer in receipt of a capital sum which is derived from an asset and comes within the criteria set out in section 535 (2)(a) TCA97.

36. Section 536 (1) reads as follows:

(a) Subject to paragraph (b), where the recipient so claims, receipt of a capital sum within subparagraph (i), (ii), (iii) or (iv) of section 535(2)(a) derived from an asset which is not lost or destroyed shall not be treated as a disposal of the asset

if—

(i) the capital sum is wholly applied in restoring the asset, or

(ii) the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum;

but, if the receipt is not treated as a disposal, all sums which, if the receipt had been so treated, would have been taken into account as consideration for that disposal in the computation of a gain accruing on the disposal shall be deducted from any expenditure allowable under Chapter 2 of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(b) Paragraph (a) shall not apply to cases within subparagraph (ii) of that paragraph if immediately before the receipt of the capital sum there is no expenditure attributable to the asset under paragraphs (a) and (b) of section 552(1) or if the consideration for the part disposal deemed to be effected on receipt of the capital sum exceeds that expenditure.

37. In effect the above allows the 'rolling over' of a consideration into the asset's replacement where the respective claim is made.

38. The capital sums referred to above in section 535(2)(a) comprise as follows:

(i) capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset,

(ii) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset,

(iii) capital sums received in return for forfeiture or surrender of a right or for refraining from exercising a right, and

(iv) capital sums received as consideration for use or exploitation of an asset.

39. For section 536(1) to apply above, the asset concerned must not be lost or destroyed.

40. I will next address the legislative provisions where the asset in question is lost or destroyed. S.536 (2) provides relief where an asset is lost or destroyed and the capital sum received as compensation is reinvested in the new asset.

41. Maguire in Irish Capital Gains Tax 2020 at 4.42 explains:

> "Asset is lost or destroyed
>
> *[4.42]*
> *TCA 1997, s 536(2) deals in part with the above. It explains that where an asset is lost or destroyed and:*
>
> 1. *a capital sum received as compensation for the loss or destruction;*
> 2. *or under a policy of insurance of the risk of the loss or destruction, is;*
> 3. *within one year of receipt or such longer period as the inspector may allow; applied in acquiring an asset in replacement of the asset lost or destroyed,*
>
> *the owner shall on due claim be treated for the purposes of the CGT Acts as if:*
>
> *(a) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrued to such owner; and*
> *(b) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under paragraph (a).*

42. A key question in this appeal is whether the land subject to the CPO has been" lost or destroyed" or not. If the land has not been destroyed, as argued by the Respondent, then

the provisions of section 536 (1), subject to section 535 (2) (a) will apply. The Respondent argued "*land disposed of to the Council … has not been destroyed or lost. Rather the land has effectively been sold without the Appellant having much choice in the matter.*"

43. If, on the other hand, the compensation received by the Appellant under the CPO is because the land was "lost or destroyed" then the provisions of section 536 (2) will apply.

44. In this appeal we have a situation where a farmer has lost a portion of farmland and his home dwelling arising from the CPO, because the Council wishes to construct a motorway through that land and dwelling. Clearly, the Appellant's farmland and home dwelling are either lost or destroyed arising from the Council's activity and hence he is being compensated for that loss. Furthermore, his only prospect of remediation is to use the compensation proceeds in the acquisition of an alternative farm in another location as the original land is no longer available to him. For that reason, I am of the view that the provisions of section 536 (2) apply in this case. Furthermore and that being so, I fail to see merit in the Respondent's argument that the "compensation received (by the Appellant) is not a capital sum derived from an asset".

45. I reject the Respondent's argument that the asset (farmland and homestead) has "not been lost or destroyed". The contract in place between the Council and the Appellant to give effect to the CPO, includes compensation described as "injurious affection" (which was not disputed by the Respondent). Typically, injurious affection occurs where land and property is adversely affected by statutory schemes causing a decrease in the freehold market value. In this appeal the homestead and farmland, to which the injurious affection relates to has been lost to the Appellant. If the CPO represents a mere sale of the land to the Council only and that the land exists after the CPO, as suggested by the Respondent, then why is the County Council remediating the Appellant through injurious affection? Because a CPO contract is compulsory by its nature, it is a forced sale by the Appellant, brought upon by the actions of the Council. The effect of the CPO contract is the loss and destruction of the homestead and the land as farmland, although clearly the

homestead and farmland are still in being at the time of the CPO contract is completed. It is my view that it is that loss and destruction which is being compensated under "injurious affection".

46. The third argument from the Respondent (if section 536 (2) applies), seeking to deny relief under section 536 was that "the compensation was not applied in restoring the asset "within one year" for the purposes of section 536". It is true that the acquisition of the new farm by the Appellant happened a few months before the compensation was actually paid to the Appellant. However, the negotiations, lasting circa two years, between the Appellant and the Council on the quantum of compensation predated the acquisition of the new farm. Furthermore in my view, the acquisition of the new farm assets was in the full knowledge of the impending CPO contract completion. Given that the time gap was only a few months, I reject the Respondent's argument that the Appellant has failed to meet the condition within section 536(2) that 'within one year of receipt or such longer period as the inspector may allow; applied in acquiring an asset in replacement of the asset lost or destroyed…'

47. What is the asset being lost or destroyed under section 536(2)? During the hearing the Appellant argued that it was his farming business (or rather the loss or damage to it) rather than the land itself that was subject to injurious affection compensation. The Respondent countered this and said it was the land that was the subject of compensation. In support of this, the Respondent cited the Supreme Court case of *Terence Chadwick and Sheelagh Davis Goff v Fingal County Council* (SC No 407 0f 2003). In that case Justice Fennelly at paragraph 37 stated;

> *"It is common case that the claimants are entitled under the section to be compensated for the value of the property taken, for the effects (if any) of severance and for injurious affection of the retained lands by anticipated use by the respondent of the lands acquired from them. It is also common case that, if no land have been taken, there would have been no right to compensation for the damage, inconvenience or loss of immunity caused by the future operation of the motorway."*

48. I agree with the Respondent on this point that it is the land and home dwelling rather the farming business which is the subject of the compensation.

49. The CGT computation, before relief under section 536 (2), for the Appellant for 2007, associated with the land disposal of the Appellant in that year which is not the subject of this appeal (Disposal A), together with the disposal of the CPO disposal (Disposal B), is set out in Appendix 1.

50. I have set out in Appendix 2 how that computation is modified to provide for relief under section 536 (2) in respect of Disposal B.

DETERMINATION

51. I determine that the Appellant is entitled to roll-over relief under section 536(2) in respect of the compensation proceeds of € 584,900 received in 2007 on foot of the CPO and the Assessment for 2007 in the amount of € 333,993 should be reduced to € 240,444.

52. I determine that the base cost for future CGT on the new farm acquired by the Appellant should be reduced by Euro 467,748.

53. This appeal has been determined in accordance with section 949AK TCA 1997.

Paul Cummins

PAUL CUMMINS
TAX APPEALS COMMISSIONER
Designated Public Official
5 August 2021

Appendix 1

			€	Indexation	€
Proceeds (Disposal A)					
66 Acres (01/06/07)	Land Sale				1,300,000
Disposal Costs					
Disposal fees			12,400	1300000/2600000	(6,200)
Net Proceeds					1,293,800
Acquisition Costs					
Cost (1999/00)	426,124	1300000/2600000	213,062	1.193	(254,183)
Chargeable Gain					1,039,617

Disposal - B

	CPO				
Proceeds (Disposal B)	Proceeds				€
10 Acres (11/06/07)	Exempt House and Garden				500,000
	Loss of land				168,000
	Goodwill payment				47,100
	Temporary Disturbance				25,000
	Injurious Affection				559,900
					1,300,000
Disposal Costs					
Disposal fees		Remaining			(6,200)
Net Proceeds					1,293,800
Acquisition Costs					
Cost (1999/00)		Remaining	213,062	1.193	(254,183)
Overall Gain					1,039,617

Exempt Gain - PPR relief				
Proceeds				500,000
Disposal Fees	6,200	1	500000/1300000	(2,385)
Acquisition Costs	76,184	1.193		(90,888)
Exempt Part				406,728
Non-Exempt Part				632,889

Total - Tax Year 2007

Part Disposal A	1,039,617
Disposal B - Non Exempt Part	632,889
Total Chargeable Gains	1,672,506
Annual Exemption	(2,540)
Net Chargeable Gain	1,669,966
CGT@20%	**333,993**

APPENDIX 2

With 'Reinvestment relief' - S.536 - (No Gain / No Loss)

				Disposal - A	
Proceeds (Di9sposal A)					
66 Acres (01/06/07)	Land Sale				1,300,000
Disposal Costs					
Disposal fees			12400	1300000/2600000	(6,200)
Net Proceeds					1,293,800
Acquisition Costs					
Cost (1999/00)	426,124	1300000/2600000	213,062	1.193	(254,183)
Chargeable Gain					1,039,617
				Disposal - B	
Proceeds (Disposal B)					
10 Acres (11/06/07)	Exempt House and Garden				500,000
	Loss of land				168,000
	Goodwill payment				47,100
	Temporary Disturbance				0
	Injurious Affection				117,152
					832,252
Disposal Costs					
Disposal fees		Remaining			(6,200)
Net Proceeds					826,052
Acquisition Costs					
Cost (1999/00)		Remaining	213,062	1.193	(254,183)
Overall Gain					571,869

Exempt Gain - PPR Relief				
Proceeds				500,000
Disposal Fees	6,200	1	500000/1300000	(2,385)
Acquisition Costs	76,184	1.193		(90,888)
Exempt Part				406,728
Non-Exempt Part				165,141
			Total - Tax Year 2007	
Part Disposal A				1,039,617
Disposal B - Non Exempt Part				165,141
Total Chargeable Gains				1,204,758
Annual Exemption				(2,540)
Net Chargeable Gain				1,202,218
CGT@20%				**240,444**
**No Gain / No Loss computation				
Proceeds (Disposal B)				117,152
Disposal Costs	6,200	1	584900/1300000	(2,790)
Acquisition Costs				
Cost (1999/00) Remaining	213,062	1.193	584900/1300000	(114,363)
				(0)
Deemed Proceeds				117,152
Amount actually received				584,900
Reduction in base cost of new farm				(467,748)