AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

73TACD2024

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") brought by [redacted] ("the Appellant") pursuant to section 67 of the Capital Acquisitions Tax Consolidated Act 2003 ("CATCA 2003") against the refusal by the Revenue Commissioners ("the Respondent") to allow an exemption to capital acquisitions tax ("CAT") in respect of certain shares received by the Appellant.

2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997, as amended ("TCA 1997"), this appeal is determined without a hearing.

Background

3. The Appellant is non-resident in Ireland. He inherited shares in [redacted] ("the shares"). The Appellant considered that the shares should be exempt from CAT pursuant to section 81 of the CATCA 2003. However, on 15 September 2023, the Respondent formally notified the Appellant that it did not agree that the section 81 exemption applied to the shares.

4. On 18 September 2023 the Appellant appealed against the Respondent's decision to the Commission. In his Notice of Appeal ("NOA"), the Appellant stated that the amount of CAT at issue was €4,000.

5. On 25 March 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. No objection was received from either party. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

6. Section 81 of the CATCA 2003 states that

> "*(1) In this section—*
>
> *"security" means any security, stock, share, debenture, debenture stock, certificate of charge or other form of security issued, whether before, on or after the passing of this Act, and which by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment is exempt from taxation when in the beneficial ownership of a person neither domiciled nor ordinarily resident in the State;*
>
> *"unit trust scheme" means an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990, whose deed expressing the trusts of the scheme restricts the property subject to those trusts to securities.*
>
> *(2) Securities, or units (within the meaning of the Unit Trusts Act 1990) of a unit trust scheme, comprised in a gift or an inheritance are exempt from tax (and are not taken into account in computing tax on any gift or inheritance taken by the donee or successor) if it is shown to the satisfaction of the Commissioners that—*
>
> *(a) the securities or units were comprised in the disposition continuously for a period of 15 years immediately before the date of the gift or the date of the inheritance, and any period immediately before the date of the disposition during which the securities or units were continuously in the beneficial ownership of the disponer is deemed, for the purpose of this paragraph, to be a period or part of a period immediately before the date of the gift or the date of the inheritance during which they were continuously comprised in the disposition;*
>
> *(b) the securities or units were comprised in the gift or inheritance—*

(i) at the date of the gift or the date of the inheritance, and

(ii) at the valuation date;

and

(c) the donee or successor is at the date of the gift or the date of the inheritance neither domiciled nor ordinarily resident in the State,

and section 89(5) shall apply, for the purposes of this subsection, as it applies in relation to agricultural property.

(3) Subsection (2)(a) shall not apply where—

(a) the disponer was neither domiciled nor ordinarily resident in the State at the date of the disposition, or

(b) the securities or units concerned came into the beneficial ownership of the disponer before 26 March 1997, or became subject to the disposition before that date, and the disponer was neither domiciled nor ordinarily resident in the State at the date of the gift or the date of the inheritance.

(4) Where the securities or units concerned came into the beneficial ownership of the disponer, or became subject to the disposition prior to 15 February 2001, then subsection (2) shall apply as if the reference to the period of 15 years in that subsection were construed as a reference to a period of 3 years."

7. In Part 23.11 of the Respondent's Capital Acquisitions Tax Manual, it is stated *inter alia* that

   "*The securities within the scope of this exemption are securities that are exempt from taxation by virtue of any enactment, or by virtue of the exercise of any power under any enactment, when they are in the beneficial ownership of a person who is neither domiciled nor ordinarily resident in the State*."

Submissions

Appellant

8. In his NOA, the Appellant stated *inter alia* that

   "*I wish to seek clarification as to the interpretation of CATCA s.81 in relation to corporate body shares which were directly transferred to myself a residuary beneficiary of the estate of my late uncle. I am non domiciled in Ireland and non resident. I have* *furnished to revenue at their request a share history of the disponer who possessed the shares in question for more than fifteen years fulfilling one of the conditions of CATCA s.81.* [redacted] *also furnished revenue with the original allotment letter of the issue of ordinary shares nominal value 0.125 euro which states the shares were lawfully issued under the [Companies] Act 1963.*

I wish to bring to your attention that the revenue manual is a condensed form of CATCA s81 and as to my knowledge doesn't contain an extended view of CATCA 2003 as per Irish statute law. The opinion of revenue is that CATCA s81 is only in relation of government securities although the definition under the general interpretation of the act is security" means any security, stock, share, debenture, debenture stock, certificate of charge or other form of security issued, whether before, on or after the passing of this Act, and which by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment is exempt from taxation when in the beneficial ownership of a person neither domiciled nor ordinarily resident in the State;

2) Securities, or units (within the meaning of the Unit Trusts Act 1990) of a unit trust scheme, comprised in a gift or an inheritance are exempt from tax (and are not taken into account in computing tax on any gift or inheritance taken by the donee or successor) if it is shown to the satisfaction of the Commissioners that—

The Unit Trust Act 1990 is clearly in relation to the [Companies Act] 1963 and the scope of the act is in relation to companies incorporated in the state of Ireland and not only government securities as revenue is of the opinion.

It is also clearly stated that the Irish revenue manual is to be in reference to Irish statute law under the applicable section."

9. In his Statement of Case, the Appellant added that "*My understanding is that CATCA s81 refers to 'securities' under a broad definition of government securities or company shares as the act itself refers to both*."

Respondent

10. In its Statement of Case, the Respondent stated *inter alia* that

"*[The Appellant] is a residuary beneficiary of the late* [redacted] *estate. Part of the inheritance that [the Appellant] received are* [redacted] *shares.*

[The Appellant's] view is that section 81 of the Capital Acquisitions Tax Act 2003 applies to his inheritance of the [redacted] *Shares as he is non-resident in Ireland and domiciled in* [redacted]

In order the claim this exemption, [the Appellant] has been asked to show that the shares have been exempted from tax "by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment". As the exemption is only given to those securities that have this quality by virtue of any enactment or by virtue of any power conferred by any enactment, it cannot apply to any company which might attempt to issue shares to simply qualify under the provisions of this section.

It is [the Respondent's] position that [redacted] *shares are not exempted under any enactment or by virtue of any power by any enactment, and therefore the section 81 exemption does not apply*."

Material Facts

11. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

    11.1. The Appellant is non-resident in this jurisdiction. He inherited shares in [redacted]

    11.2. The Respondent refused to grant the Appellant an exemption from CAT on the shares pursuant to section 81 of the CATCA 2003.

Analysis

12. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse him an exemption from CAT on the shares. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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.*"

13. Section 81 of the CATCA is titled "Exemption of certain securities", and provides for an exemption from CAT for gifts and inheritances of certain securities and units in certain unit trust schemes. To qualify for an exemption under section 81, it must be shown to the satisfaction of the Respondent (and, on appeal, to the satisfaction of the Commission) that:

(1) the securities or units were comprised in the disposition continuously for a period of 15 years immediately before the gift or inheritance,

(2) the securities or units were comprised in the gift or inheritance at the date of the gift or inheritance and at the valuation date, and

(3) the donee or successor is neither domiciled nor ordinarily resident in the State at the date of the gift or inheritance.

14. "Security" is defined in section 81(1) as

"*any security, stock, share, debenture, debenture stock, certificate of charge or other form of security issued, whether before, on or after the passing of this Act,* *and which by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment is exempt from taxation when in the beneficial ownership of a person neither domiciled nor ordinarily resident in the State"* (emphasis added).

15. The Respondent refused the Appellant an exemption from CAT in respect of his shares as it stated that shares in [redacted] were not exempt from taxation "*by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment*". Consequently, the shares were not entitled to exemption under section 81.

16. The Commissioner considers that the burden of proof rests on the Appellant to show that the Respondent is incorrect, and that the shares are exempt from CAT "*by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment*". However, he is satisfied that the Appellant has not done so. He has not pointed to any Act, statutory instrument or other relevant power that exempts shares in [redacted] from CAT.

17. In his submissions, the Appellant referred to the Unit Trust Scheme 1990 ("the 1990 Act"). The Commissioner is satisfied that the shares do not come within the scope of the definition of "unit trust scheme" in that Act. The 1990 Act does give a wider definition of "securities" than is set out in section 81 of the CATCA 2003. However, the Commissioner is satisfied that the definition set out in the 1990 Act, or any such reference in the Companies Act 1963, is not relevant for the purposes of this appeal.

18. The Respondent, and the Commissioner on appeal, is bound by the wording of the exemption created by section 81 of the CATCA 2003. It is clear from the section that only those securities which are exempt from CAT "*by virtue of any enactment or by virtue of the exercise of any power conferred by any enactment*" will qualify for the exemption. The Respondent has stated that the Appellant's shares are not exempt, and the Appellant has

failed to demonstrate that the Respondent is incorrect by pointing to an enactment or any power conferred by any enactment that exempts the shares from CAT. Therefore, it follows that the Commissioner determines that the appeal is unsuccessful.

Determination

19. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant's application for an exemption from CAT for his shares in [redacted] under section 81 of the CATCA 2003.

20. The Commissioner appreciates that this determination will be disappointing to the Appellant, and he considers that he was correct to check his entitlements under the CATCA 2003. However, for the reasons set out herein, the Commissioner is satisfied that the appeal cannot be successful.

21. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

22. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

23. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
23 April 2024