

G v G (FINANCIAL PROVISION: EQUAL DIVISION)

[2002] EWHC 1339 (Fam)

[2002] 2 FLR 1143

[2003] Fam Law 14

Family Division

Coleridge J

31 July 2002

The judgment is very long, but the discussion on tax is limited to one self-contained paragraph which reads as follows:

[43] This transfer is ordered on the footing that business hold-over relief will be available to the husband; that the wife will receive the shares at the husband's base value; and that, accordingly, no liability to CGT will arise on the husband as a result of the transfer. I have seen an extract from an Inland Revenue manual which confirms that a court-ordered transfer of business assets does in principle satisfy the conditions for a claim for hold-over relief; but which goes on to suggest that actual consideration given by the donee may reduce the gain potentially eligible to hold-over relief to nil. The view of the Inland Revenue appears to be that the actual consideration is the surrender by the donee of rights which she would otherwise be able to exercise to obtain alternative financial provision. I do not share their view about that and I have to say that this view seems to me to be based on a misconception. In an ancillary relief hearing neither party has any

‘rights’ as such at all: all the powers are vested in the court which may or may not exercise them. The parties may make suggestions as to how those powers are to be exercised. That is all. So when I order a transfer of shares in favour of the wife on a clean break basis she is not ‘giving up’ her claim for maintenance as a quid pro quo. I am simply exercising my statutory powers in the way I consider to be fair. This would be equally the case where the court was making a consent order, for although the parties may have made their agreement it is for the court independently to adjudge its fairness: see *Xydhias v Xydhias* [1999] 1 FLR 683 at 691 where Thorpe LJ stated:

‘An even more singular feature of the transition from compromise to order in ancillary relief proceedings is that the court does not either automatically or invariably grant the application to give the bargain the force of an order. The court conducts an independent assessment to enable it to discharge its statutory function to make such orders as reflect the criteria listed in s 25 of the Matrimonial Causes Act 1973 as amended.’

Although I cannot, of course, ultimately bind the Inland Revenue, I am satisfied that, at least in this case, the wife gives no consideration for the transfer of the shares I order in her favour; and that, accordingly, hold-over relief should be available.