



90TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against the refusal of relief in accordance with s.477C of the Taxes Consolidation Act 1997, as amended (hereafter 'TCA 1997') known as the help to buy ('HTB') scheme.
2. By agreement of the parties, this appeal is adjudicated without an oral hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The Appellant is self-building a new dwelling and wishes to avail of the Help to Buy scheme legislated for in section 477C TCA 1997, as amended.
4. The Appellant made an application to the Respondent under the provisions of section 477C (6) on the 30th May 2017. As the conditions for an application under subsection 6 were met the application was approved and a Help to Buy Access number was issued to the Appellant.

5. The Appellant was then in a position to make a claim as per subsection 3(b) 477C TCA 1997.
6. As part of this application she informed Revenue that her mortgage drawdown in respect of the self-build would be €215,000 out of a total build cost of €303,685; that the site was valued at €110,000 and was gifted to the Appellant by her mother; that the value of the completed self-build qualifying residence would be between €413,865 and €450,000.
7. Section 477C(1) provides that ;

'loan-to-value ratio' means the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence.'

8. The conditions to be satisfied in order to avail of the relief include the requirement of a loan-to-value ratio of "*not ... less than 70%*". Revenue declined to process the Appellant's application for relief as the loan-to-value ratio did not meet the required statutory minimum.
9. The Respondent refused the claim under subsection (3)(b) and the Appellant made an appeal to the Tax Appeals Commission.

Legislation

10. The relevant legislative provision is section 477C TCA 1997 (see **Appendix I** below for relevant extracts). In particular subsection. 477C (11) provides; '*The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.*'

Submissions

11. The Appellant contended that it was unfair that she was denied the HTB relief in circumstances where she was borrowing 70.8% of the build costs. She did not require a loan in respect of the site as it was "transferred to her, without cost, from her mother".



12. The valuations submitted by the Appellant indicate that the site on its own is valued at €110,000 and the value of the residence on completion is €450,000. These were based on the mortgage application/valuation report from REDACTED bank provided by the Appellant.
13. The Respondent submitted that as the value of the site was €110,000 and the value of the build cost was €303,685, the total estimated valuation of the residence was €413,000.

Analysis and findings

14. Subsection 11 of section 477C states that “The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.”

Subsection 1 of section 477C defines ‘loan-to-value ratio’ as:

‘the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence;’

‘purchase value’ means –

(b) in the case of a self-build qualifying residence, the approved valuation;

“approved valuation”, in relation to a self-build qualifying residence, means the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence;

15. As part of her claim the Appellant is required to provide certain information/documents to allow a claim to be processed. Among the documents required is confirmation that a qualifying loan has been entered into and the amount of the qualifying loan.
16. The information provided by Appellant when her Help to Buy claim was being considered was that the value of the site was €110,000 and the cost of the build was €303,000, giving an estimated valuation of €413,000. A valuation of €450,000 was provided by REDACTED bank.

17. In her submissions, the Appellant indicated that under the planning permission received, there were restrictions on sale of the self-build house up to REDACTED. This may account for the Appellant later asserting that the valuation of the house was €383,985.
18. The Appellant informed the Revenue that the maximum loan she would qualify for was €215,000. Based on these figures Appellant's loan-to-value ratio was, at best, 56%. This is less than the 70% specified in subsection 11 of section 477C TCA 1997.
19. Depending on which valuation is appropriate, the loan to value ratio of the Appellant's loan is between 47.7% (based on a €450,000 valuation) and 56% (based on a €383,985 valuation). Therefore, it falls short of the 70% required by the legislation. On that basis the Appellant does not qualify for the relief available under the HTB schemes.
20. The Appellant, to succeed in her appeal, is obliged to bring herself squarely within the terms of the relief/exemption if she is to be entitled to avail of same.
21. On the basis that the value of the self-build qualifying residence is between €383,985 and €450,000, the loan-to-value ratio in this case and calculated as defined in the legislation, is less than 70%.

Conclusion

22. The Appellant's loan-to-value ratio falls short of the required statutory minimum of 70% specified in sub-section 477C (11) TCA 1997 and the Appellant is thus unable to satisfy the qualifying conditions in relation to the HTB scheme. As a result, I determine that the Appellant is not entitled to avail of the relief pursuant to s.477C TCA 1997.
23. The appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

TAX APPEAL COMMISSIONER

18 March 2020



Appendix I

Section 477C TCA 1997 – Help to Buy

[(1) In this section—

“appropriate payment” shall be construed in accordance with *subsection (4)*;

“appropriate tax” has the meaning assigned to it by *section 256*;

“approved valuation”, in relation to a self-build qualifying residence, means the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence;

“first-time purchaser” means an individual who, at the time of a claim under *subsection (3)* has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;

“income tax payable” has the meaning assigned to it by *section 3*;

“loan” means any loan or advance, or any other arrangement whatever, by virtue of which interest is paid or payable;

“loan-to-value ratio” means the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence;

“PPS number”, in relation to an individual, means the individual’s personal public service number within the meaning of Section 262 of the Social Welfare Consolidation Act 2005;

“purchase value” means—

(a) in the case of a qualifying residence, the price paid for the qualifying residence, being a price that is not less than its market value, or

(b) in the case of a self-build qualifying residence, the approved valuation;

“qualifying contractor” has the meaning assigned to it by *subsection (2)*;

“qualifying lender” has the meaning assigned to it by *section 244A(3)*;

“qualifying loan”, means a loan, which—



(a) is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in—

(i) the purchase of a qualifying residence, or

(ii) the provision of a self-build qualifying residence (including, in a case where such acquisition is required for its construction, the acquisition of land on which the residence is constructed),

(b) is entered into solely between a first-time purchaser and a qualifying lender (but this does not exclude a loan to which a guarantor is a party), and

(c) is secured by the mortgage of a freehold or leasehold estate or interest in, or a charge on, a qualifying residence or a self-build qualifying residence;

“qualifying period” means the period commencing on 19 July 2016 and ending on 31 December 2019;

“qualifying residence” means—

(a) a new building which was not, at any time, used, or suitable for use, as a dwelling, or

(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,

and—

(i) which is occupied as the sole or main residence of a first-time purchaser,

(ii) in respect of which the construction work is subject to the rate of tax specified in section 46(1)(c) of the Value-Added Tax Consolidation Act 2010, and

(iii) where the purchase value is not greater than—

(I) where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in *subsection (3)(a)* is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in *subsection (3)(b)* is drawn down by a claimant, €600,000, or

(II) in all other cases, €500,000;

“relevant tax year” means a year of assessment, within the 4 tax years immediately preceding the year in which an application is made under this section, in respect of which a claim for an appropriate payment, or part of such appropriate payment, is made by an individual;

“Revenue officer” means an officer of the Revenue Commissioners;

“self-build qualifying residence” means a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;

“tax reference number” means in the case of an individual, the individual’s PPS number or in the case of a company, the reference number stated on any return of income form or notice of assessment issued to that company by the Revenue Commissioners;

“tax year” means a year of assessment within the meaning of the Tax Acts;

“VAT registration number”, in relation to a person, means the registration number assigned to the person under section 65 of the Value-Added Tax Consolidation Act 2010.

(2) In this section, a “qualifying contractor” means a person who applies to the Revenue Commissioners for registration as a qualifying contractor (pursuant to arrangements for such registration that are put in place by the Revenue Commissioners) and in respect of whom the Revenue Commissioners are satisfied is entitled to be so registered and—

(a) who—

(i) complies with the obligations referred to in *section 530G* or *530H*, or

(ii) in the case of a contractor who is not a subcontractor to whom *Chapter 2 of Part 18* applies, complies with the obligations referred to in *subparagraph (i)*, other than the obligations referred to in *paragraphs (a) and (b) of subsection (1) of section 530G* or *530H*,

(b) who has been issued with a tax clearance certificate in accordance with *section 1095* and such tax clearance certificate has not been rescinded under *subsection (3A)* of that section, and

(c) who provides to the Revenue Commissioners—

(i) details of qualifying residences which the contractor offers, or proposes to offer, for sale within the qualifying period,

(ii) details of any planning permission under the Planning and Development Acts 2000 to 2015 in respect of the qualifying residences referred to in *subparagraph (i)*,

(iii) details of the freehold or leasehold estate or interest in the land on which the qualifying residences referred to in *subparagraph (i)* are constructed or to be constructed, and

(iv) any other relevant information that may be required by the Revenue Commissioners for the purposes of registration of a person as a qualifying contractor.

(3) Where an individual has, in the qualifying period, either—

(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or

(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence, that individual may make a claim for an appropriate payment.

(4) On the making of a claim by an individual referred to in *subsection (3)*, a payment (in this section referred to as an “appropriate payment”) shall, subject to the provisions of this section, be made in accordance with *subsection (16)*...

(6)(a) Prior to submitting a claim under *subsection (3)*, an individual shall make an application to the Revenue Commissioners which shall include—

(i) an indication that he or she intends to make a claim under this section,

(ii) his or her name and PPS number, and

(iii) confirmation by the individual, where such is the case, that the conditions specified in *paragraph (b)* have been met.

(b) The conditions referred to in *paragraph (a)(iii)* are that—

(i) he or she is a first-time purchaser,

(ii) where the individual is a chargeable person within the meaning of *Part 41A* or, as appropriate, *Part 41* for a tax year within the 4 tax years immediately preceding the year in which the application is made, he or she has complied with the requirements of that Part or, as appropriate, those Parts and has paid the amount of income tax payable and of universal social charge (within the meaning of *Part 18D*) which he or she is liable to pay, in respect of each such tax year,

(iii) where the individual is not a chargeable person within the meaning of *Part 41A* or, as appropriate, *Part 41* for a relevant tax year, he or she has made a return of income, in such form as the Revenue Commissioners may require, and has paid the amount of income tax payable and of universal social charge which he or she is liable to pay, in respect of each such relevant tax year, and

(iv) in the case of an individual to which *subparagraph (ii)* refers, he or she has been issued with a tax clearance certificate in accordance with *section 1095* and such tax clearance certificate has not been rescinded under *subsection (3A)* of that section.

(c) Where *section 1017* or *1031C* applied in respect of a tax year, the individual who must meet the conditions referred to in *subparagraphs (ii)* and *(iii)* of *paragraph (b)* shall be the person assessed to tax under *section 1017* or the nominated civil partner within the meaning of *section 1031A*...

(11) The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent...

(21) An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with *section 949I*, within the period of 30 days of the notice of that decision.