



91TACD2020

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a decision made by the Respondent in determining by way of a determination dated 30th May 2017, that the Appellant is a person liable for Local Property Tax (LPT) in relation to **Address Redacted** in accordance with Section 34(2) of the Finance (Local Property Tax) Act 2012, as amended.

Background

2. The Appellant sought and was refused an exemption from LPT in respect of her property in accordance with Section 8 of the Finance (Local Property Tax) Act 2012 (as amended). This Section makes provision for an exemption from LPT for certain categories of persons in particular circumstances who purchased a property in the period 1 January 2013 to 31st December 2013 and occupied it as their sole or main residence.
3. The Respondent submits that the Appellant is not entitled to an exemption under Section 8 (1)(a) of the Finance (Local Property Tax) Act 2012 (as amended) because she purchased the property in 2014 rather than in 2013.

Legislation

4. The charging provision is contained in LPT Act, section 16 and provides:

"Subject to the provisions of this Act ... there shall be charged, levied and paid a tax to be known ... as 'local property tax' in respect of the chargeable value of a relevant residential property."



5. LPT Act Section 8 **Exemption for first-time buyers:**

(1) Subject to subsection (3), a residential property shall not, for the purposes of this Act, be regarded as a relevant residential property in respect of the liability dates [in the years 2013, 2014, 2015, 2016, 2017 and 2018]¹ where—

(a) the property is purchased in the period beginning on 1 January 2013 and ending on 31 December 2013,

(b) subject to subsection (2), the property is purchased by a person who would have been entitled to relief under [section 244](#) of the Act of 1997 had a qualifying loan (within the meaning of that section) been taken out in the period beginning on 1 January 2004 and ending on 31 December 2012, and

(c) after the property is purchased, it is occupied as the sole or main residence of the person referred to in paragraph (b) (or, in the case of the persons referred to in subsection (2)(a), (b) or (c), the married couple, civil partners or cohabitants, as the case may be).

(2) If the property referred to in subsection (1)(a) is purchased in the period specified in that provision by—

(a) a married couple,

(b) civil partners, or

(c) cohabitants,

this section shall apply notwithstanding that one of the spouses, civil partners or cohabitants, as the case may be, would not have been entitled to the relief referred to in subsection (1)(b).

(3) Subsection (1) shall cease to apply where the property referred to in that subsection—

(a) is sold (within the meaning of section 125) by, or

(b) ceases to be used as the sole or main residence of,

the person or persons referred to in subsection (1)(c) at any time after the purchase of the property

6. LPT Act Section 34 **Claim that person not a liable person**

(1) Where a person has been required by notice by the Revenue Commissioners under [section 33\(1\)](#) to prepare and deliver a return and the person does not consider



himself or herself to be a liable person, the person shall notify the Revenue Commissioners accordingly and the notification —

(a) shall be in writing,

(b) shall be made within 30 days after the date of the notice referred to in [section 33\(1\)](#),

(c) with reference to Part 2 or 3, as the case may be, shall include an explanation of the reason why the person does not consider himself or herself to be a liable person,

(d) shall be accompanied by whatever supporting documentation may be relevant, and

(e) shall include any relevant information in the knowledge or possession of the person who has received the notice referred to in [section 33](#) which relates to the person who is, or who may be, the liable person in relation to the relevant residential property in respect of which the notice was given.

(2) The Revenue Commissioners, having considered the notification given by a person in accordance with this section, shall —

(a) make a determination on whether the person is a liable person in relation to the relevant residential property in respect of which the notice referred to in [section 33\(1\)](#) was given, and

(b) notify the person of their determination.

(3) Where a person is aggrieved by the determination referred to in subsection (2), he or she may appeal [the determination to the Appeal Commissioners, in accordance with [section 949I](#) of the Act of 1997, within the period of 30 days after the date of the notice of that determination]¹

The Land and Conveyancing Law Reform Act 2009

7. The Land and Conveyancing Law Reform Act 2009 came into force on 1st December 2009 with the stated objective of providing fundamental reform and modernisation of land law and conveyancing law and to simplify the law and the conveyancing process.
8. Section 52 of that act provides that the entire beneficial interest in the property being purchased passes to the purchaser on the making of “an enforceable contract for the sale or other disposition of land.” However, subsection 2 of that section imposes the following obligation and rights:



- (a) the obligation of the vendor to maintain the land so long as possession of it is retained, or*
- (b) the liability of the vendor for loss or damage under any contractual provision dealing with such risk, or*
- (c) the vendor's right to rescind the contract for failure by the purchaser to complete or other breach of the contract, or*
- (d) any provision to the contrary in the contract."*

Submissions

Appellant

9. The Appellant made the following submissions

- (a) **Redacted Address** was purchased by the Appellant in October 2013 to be occupied as her sole or main residence.
- (b) She signed an irrevocable contract to purchase **Address Redacted**.
- (c) There were no provisions in that contract contrary to Section 52, sub-section 2 of the Land and Conveyancing Law Reform Act 2009.
- (d) Through her solicitors she paid LPT for 2014 in the amount of €557.80 as her solicitor insisted that she was the owner from signing of the contract in October 2013 and hence liable for 2014 LPT. This payment was made before Deed Stamping which occurred on 17 January 2014.
- (e) She submits to be the de facto owner of **Address Redacted** from October 2013.
- (f) She was a cash buyer with no mortgage issues attaching to the purchase of the property.
- (g) She elaborates that all beneficial interest passed to her as the new owner from the date of making an enforceable contract for sale of the property involved. The Appellant supports her contention by quoting from Black's Law Dictionary under the heading *"Profit, benefit or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control"*.

In this regard the Appellant submits that all legal paperwork was completed by December 2013 and her solicitors advised that final papers were ready for signing together with handing over of keys on 20 December 2013. For purely logistical reasons she decided not to move in until after 1 January 2014.



(h) Based on the premise that the beneficial interest passed to her from the date of making an enforceable contract she qualified and applied for an exemption from LPT which was granted in early 2014.

(i) The exemption was withdrawn by the Respondent on 30th May 2017 having been reviewed on its behalf on 24th February and 14th March 2017.

(j) The Appellant submits further That the Respondent's contention of regarding a property as having been purchased when the new owner is actually entitled to occupy the property as set out in the Respondent's letter of 30th May does not comply with the law in this matter, as it applies, as per Section 52 of the Land and Conveyancing Law Reform Act, 2009.

(k) The Appellant comments that where Revenue regards something to be the case, as in this specific instance, is contrary to all relevant case law.

Respondent

10. On Behalf of the Respondent, it was submitted:

(a) The Appellant entered into an agreement in October 2013 to purchase the property at **Address Redacted**. The agreement was signed by the Appellant and the vendor.

(b) The date of execution of the instrument (deed of Assignment) was 16 January 2014. The property had been valued by the vendor in May 2013 in the category value €300,000 to €350,000,

(c) The Respondent does not agree with the Appellant's assertion that the property was purchased by irrevocable contract in October 2013 entitling the Appellant to an exemption to LPT in accordance with Section of the Finance (Local Property Tax) Act 2012. On the contrary the Respondent considers that the Appellant purchased the property on the date of the execution of the instrument on 16 January 2014.

(d) The Respondent whilst acknowledging that Section 52 of the Land and Conveyancing Reform Act 2009 provides that the entire beneficial interest in the property passes to the purchaser on the making of an enforceable contract for the acquisition of land, submits that the transaction was not completed until 16 January 2014.

(e) The Respondent elaborates that it was only on the 16th January that the Appellant was entitled to the immediate possession of the property as defined in Section 11(1) of the Finance (Local Property Tax) Act 2012. The Respondent concludes then that the Appellant was not entitled to the exemption provided for in Section 8 of the Finance (Local Property Tax) Act 2012.



Analysis

11. The liability for LPT is calculated with reference to the “liability date”, on the person who:
*“holds any estate, interest or right in a relevant residential property entitling the person to—
(a) the immediate possession of such property for a period that may equal or exceed 20 years, or
(b) the receipt of rents or profits of such property for a period that may equal or exceed 20 years”*
12. It is therefore necessary to determine whether the Appellant, as at 1st November 2013 (“liability date”), held an entitlement to the immediate possession of the Property and whether that entitlement was for “a period that may equal or exceed 20 years”.
13. The parties agreed that the Appellant acquired her beneficial interest in the Property in October 2013, the date of signing the contract pursuant to section 52 Land and Conveyancing Law Reform Act 2009. However, the transaction was not completed until 16th January 2014.
14. In Murdoch and Hunt’s Dictionary of Irish Law, Sixth Edition, ‘completion’ is defined as the:
“[F]inal stages in a contract for the sale of land which is effected by the delivery up by the vendor of a good title and of the actual possession or enjoyment thereof to the purchaser and by the purchaser in accepting such title, and paying the agreed purchase price.”

Entitled to immediate possession

15. Notwithstanding that the purchaser was the beneficial owner of the Property in October 2013, that person was not entitled to immediate possession of the Property until the transaction was completed, on 16th January 2014. As such, on the liability date 1st November 2013, the vendor was the only person “entitled to the immediate possession” of the Property.

Period that may equal or exceed 20 years



16. The statutory wording imposing the tax on the “liable person” is with reference, inter alia, to a person “entitled to immediate possession” of a residential property for a period “that may equal or exceed 20 years”. Therefore, the tax is not imposed on a person holding the beneficial interest in the property for a period of least 20 years but rather on the person entitled to immediate possession for period that may equal or exceed 20 years.
17. Therefore, while the Appellant was contractually obliged to acquire the entire interest in the Property, such an obligation did not extend to a situation where the Appellant, however unlikely, was unable to complete the contract. In such an event, the vendor could rescind the contract and retain the beneficial interest in the Property.
18. Therefore, and notwithstanding that on the liability date of 1st November 2013 the Appellant was not entitled to immediate possession of the Property for a period that would equal or exceed 20 years, the charge to tax for 2014 was, in accordance with the statutory wording, the liability of the vendor not the Appellant.

Conclusion

19. I have therefore determined that the Appellant only became a person “entitled to immediate possession” of a residential property for a period “that may equal or exceed 20 years” on 16th January 2014 and was therefore not entitled to an exemption to LPT in accordance with Section 8 (1) of the Finance (Local Property Tax) Act 2012. As such, this appeal is therefore determined in accordance with TCA, section 949AL.

Charlie Phelan
Appeal Commissioner
8 January 2020

