AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

139TACD2023

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [redacted] ("the Appellant") against a refusal by the Revenue Commissioners ("the Respondent") of a claim made by the Appellant for a repayment of Stamp Duty, in accordance with the provisions of Section 159A of the Stamp Duty Consolidation Act 1999 ("the SDCA 1999"). The amount at issue is in the sum of €[redacted].

2. On 21 November 2022, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. By Deed of Transfer dated 18 January 2017, the Appellant purchased property at [redacted], for the purchase price of [redacted].

4. On **20 January 2017**, a Stamp Duty return was filed online on a self-assessment basis. The Stamp Duty return stated that the property was non-residential, agricultural land.

Stamp Duty in the sum of €[redacted] was paid at the non-residential Stamp Duty rate of 2%, based on the purchase price of the property of [redacted]. On 20 January 2017, a Stamp Duty Certificate issued from the Respondent.

5. On **8 December 2017**, the Appellant received correspondence enclosing a certificate from Teagasc informing him that he had successfully completed the QQI Level 6 Specific Purpose Award in Farm Administration, a qualification which meets the requirements for "*the Young Farmers Scheme, National Reserve, Stamp Duty Relief Exemption and higher rate of TAMS grant*".

6. On 13 January 2023, the Stamp Duty return was amended by the Appellant's Solicitors, to claim Young Trained Farmers ("YTF") relief under Section 81AA SDCA 1999. As a result of the amendment, the Stamp Duty liability was reduced from €[redacted] to nil.

7. On **13 January 2023**, a claim for repayment of the Stamp Duty was received by the National Stamp Duty Office from the Appellant's Solicitors on behalf of the Appellant. The repayment was sought under the provisions of Section 81AA SDCA 1999.

8. The Appellant's Solicitor submits that that Appellant received the qualification well within the statutory time limit and duly instructed the Appellant's Solicitor's to make a claim for a repayment of Stamp Duty. However, the Appellant's Solicitor submits that the matter fell into abeyance, when a Solicitor left the office and the claim was never made within the requisite time period.

9. The Appellant's Solicitor is seeking that the situation is looked at sympathetically, on the Appellant's behalf. The Appellant's Solicitor submits that the Appellant did everything required of him and he would have qualified for the repayment of Stamp Duty, as he was a genuine YTF. Further, he is of limited financial means, with a young family, is starting out in farming and the tax relief would be of great benefit to him.

10. The Respondent states that a claim for YTF relief must be made within 4 years of the date on which the Deed of Transfer was stamped. Therefore, the Respondent asserts that it is statutorily prohibited from making a repayment, where a claim is made outside of this 4 year period.

11. On **26 January 2023**, the Respondent corresponded with the Appellant's Solicitor who acted as Agent in the sale, to inform it that the claim for a repayment of Stamp Duty was made outside of the 4 year time limit provided for in section 159A SDCA 1999, and details of the appeal process were provided to the Appellant.

Legislation and Guidelines

12. The legislation relevant to this appeal is as follows:-

13. Section 159A SDCA 1999, Time limits for claiming a repayment of stamp duty, provides:-

(1) Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the transfer order referred to in section 78B was entered or the date the person achieves the standard within the meaning of section 81AA(11)(a).

(2) Any person aggrieved by a decision of the Commissioners on a claim for repayment, within the meaning of section 159B(1), may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision to that person.

14. Section 159B(4) SDCA 1999, Interest on repayments of Stamp Duty, provides:-

(4) A claim for repayment under this section shall only be treated as a valid claim when—

(a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made, and

(b) all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

15. Section 81AA SDCA 1999, Transfers to Young Trained Farmers, inter alia provides:-

"young trained farmer" means a person in respect of whom it is shown to the satisfaction of the Commissioners that -

(a) the person had not attained the age of 35 years on the date on which the instrument, in respect of which relief is being claimed under this section, was executed, and

(b) the conditions referred to in subsection (2), (3), (4) or (5) are satisfied;

(2) The condition required by this subsection is that the person, referred to in paragraph (a) of the definition of young trained farmer, is the holder of a trained farmer

qualification (within the meaning given by section 654A of the Taxes Consolidation Act 1997.

(3) The condition required by this subsection is that the person, referred to in paragraph (a) of the definition of young trained farmer, is the holder of a letter of confirmation from Teagasc, confirming satisfactory completion of a course of training, approved by Teagasc, for persons, who in the opinion of Teagasc, are restricted in their learning capacity due to physical, sensory or intellectual disability or to mental health.

(4) The conditions required by this subsection are that the person, referred to in paragraph (a) of the definition of young trained farmer, before 31 March 2008, is the holder of –

(a) *(i)a qualification set out in subparagraph (f) of paragraph 1, or subparagraph (h) of paragraph 2, of Schedule 2A, and*

(ii) a 180 hours certificate,

or

(b) *(i)a qualification set out in subparagraph (b), (c) or (d) of paragraph 3 of Schedule 2A, and*

(ii) an 80 hours certificate.

(5) The conditions required by this subsection are that the person, referred to in paragraph (a) of the definition of young trained farmer, before 31 March 2008 -

(a) has achieved the required standard for entry into the third year of a full-time course in any discipline of 3 or more years' duration at a third-level institution, and that has been confirmed by the institution, and

(b) is the holder of a 180 hours certificate.

Submissions

Appellant's submissions

16. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

    16.1. By Deed of Transfer dated 18 January 2017, the Appellant purchased property at [redacted], for the purchase price of [redacted].

    16.2. On 20 January 2017, a Stamp Duty return was filed. The Stamp Duty return was filed on a self-assessment basis by the Appellant's Solicitors, as Agent for the Appellant. The Appellant purchased the property through bank finance and as a result a Stamp Duty return was submitted through the lender's Solicitors, as Agent for the Appellant.

    16.3. Whilst full Stamp Duty was paid at the time, the Appellant was in the process of acquiring the necessary Teagasc qualification, in order that he could avail of YTF relief, in relation to the Stamp Duty due and owing.

    16.4. On the 8 of December 2017, the Appellant received the certificate and was well within the 4 year time period to claim a repayment of Stamp Duty. However, the matter fell into abeyance, due to the fact that the Solicitor dealing with the matter left the firm and it was not apparent that the relief had not been claimed.

    16.5. The Appellant did everything required of him and he qualified for a repayment of Stamp Duty, as he was a genuine YTF. The Appellant is of limited financial means, with a young family and is starting out in farming. The tax relief would be of great benefit to the Appellant.

    16.6. The notice rejecting the Appellant's claim was sent to the Appellant's Solicitors, who were acting as Agent in the sale, as they were the Solicitors to the lenders to the Appellant and the firm of Solicitors which made the Stamp Duty return initially. The Appellant requests that some leniency is granted in relation to this matter.

Respondent's submissions

17. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case and Outline of Arguments:-

17.1. By Deed of Transfer dated 18 January 2017, the Appellant purchased property at [redacted], for the purchase price of [redacted]

17.2. On 20 January 2017, a Stamp Duty return was filed online in respect of the transfer. The Stamp Duty return was filed on a self-assessment basis by the Lender's Solicitors, acting as Agent for the Appellant.

17.3. The Stamp Duty return stated that the property was non-residential, agricultural land. Stamp Duty in the sum of €[redacted] was paid at the non-residential Stamp Duty rate of 2%, based on the purchase price of the property of [redacted]. On 20 January 2017, a Stamp Duty Certificate issued from the Respondent.

17.4. On 13 January 2023, a claim for repayment of the Stamp Duty was received by the National Stamp Duty Office from the Appellant's Solicitors on behalf of the Appellant.

17.5. A claim for YTF relief must be made within 4 years of the date on which the Deed of Transfer was stamped. The Respondent is statutorily prohibited from making a repayment where a claim is made outside of this 4 year period.

17.6. A transferee may also be entitled to claim a repayment of Stamp Duty already paid where they did not hold the relevant agricultural qualification on the date on which the Deed of Transfer was executed, but obtains the qualification within 4 years of this date. Such a claim must be made within 4 years of the date on which the qualification was obtained.

17.7. On 26 January 2023, the Respondent wrote to the Solicitors acting as Agent for the Appellant informing them that the claim for repayment of Stamp Duty was made outside the 4 year time limit, as per the provisions of Section 159A SDCA 1999 and provided the Appellant with details of the appeal process.

Material Facts

18. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

18.1. By Deed of Transfer dated 18 January 2017, the Appellant purchased property at [redacted].

18.2. The purchase price of the property was in the sum of [redacted].

18.3. On 20 January 2017, a Stamp Duty return was filed online in respect of the transfer.

18.4. The Stamp Duty return was filed on a self-assessment basis by the Solicitors acting as Agent for the Appellant.

18.5. The Stamp Duty return stated that the property was non-residential, agricultural land. Stamp Duty in the sum of [redacted] was paid at the non-residential Stamp Duty rate of 2%, based on the purchase price of the property of €169,000.

18.6. On 20 January 2017, a Stamp Duty Certificate issued from the Respondent.

18.7. On 8 December 2017, the Appellant received correspondence enclosing a certificate from Teagasc, informing him that he had successfully completed the QQI Level 6 Specific Purpose Award in Farm Administration, a qualification which meets the requirements for "*the Young Farmers Scheme, National Reserve, Stamp Duty Relief Exemption and higher rate of TAMS grant*".

18.8. On 13 January 2023, the Stamp Duty return was amended by the Appellant's Solicitors, to claim YTF relief under Section 81AA SDCA 1999. As a result of the amendment, the Stamp Duty liability was reduced from [redacted] to nil.

18.9. On 13 January 2023, a claim for repayment of the Stamp Duty was received by the National Stamp Duty Office from the Appellant's Solicitors on behalf of the Appellant. The repayment was sought under the provisions of Section 81AA SDCA 1999.

18.10. On 26 January 2023, the Respondent corresponded with the Solicitors acting as Agent for the Appellant to inform them that the claim for repayment was made outside the 4 year time limit, in accordance with the provisions of Section 159A SDCA 1999.

18.11. The Appellant did everything required of him and he qualified for a repayment of Stamp Duty as he was a genuine YTF, but for the four year time limit.

Analysis

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case *of Menolly Homes Ltd v Appeal Commissioners and another* ("*Menolly Homes*") [2010] IEHC 49, at paragraph 22, Charleton J. stated

> *"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".*

20. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgement of Charlton J. in *Menolly Homes,* wherein he states that:

> "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

21. Section 81AA SDCA 1999 provides for relief from Stamp Duty to "young trained farmers" on their acquisition of agricultural land where certain conditions are met. The Commissioner notes the submission of the Appellant that on 8 December 2017, the Appellant received correspondence from Teagasc enclosing a certificate and informing the Appellant that he had successfully completed the QQI Level 6 Specific Purpose Award in Farm Administration, a qualification which meets the requirements for "*the Young Farmers Scheme, National Reserve, Stamp Duty Relief Exemption and higher rate of TAMS grant*". There is no disagreement between the parties that the Appellant is a "young trained farmer".

22. Thus, the Commissioner is satisfied that the Appellant "achieved the standard" of a "young trained farmer" capable of claiming relief in accordance with the requirements of section 81AA SDCA 1999. The Commissioner commends the Appellant on his successful achievement.

23. Therefore, the issue that arises herein, solely relates to the date upon which the Appellant made a claim for repayment of Stamp Duty paid in the sum of €[redacted], in relation to the purchase of agricultural land.

24. Section 159A SDCA 1999, provides for a time limit in relation to a claim for repayment of Stamp Duty. This section restricts the repayment of Stamp Duty to a valid claim, within the meaning given in section 159B SDCA 1999, made within 4 years of the date of either the stamping of an instrument by the Respondent or the date a statement of liability (e.g. in the case of levies and companies capital duty) was delivered to the Respondent or the date the young trained farmer becomes the holder of the required educational qualification (see section 81AA(11) TCA 1997).

25. Section 159B (4) SDCA1999 provides that a claim for repayment shall only be treated as a valid claim when— (a) it has been made in accordance with the provisions of the law (if

any) relating to Stamp Duty under which such claim is made, and (b) all information which the Respondent may reasonably require to enable it determine if and to what extent a repayment is due, has been furnished to the Respondent.

26. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal. The Commissioner notes that on **18 January 2017** there was a purchase of property by the Appellant and subsequently on **20 January 2017**, a Stamp Duty return was filed online in respect of the transfer. The Stamp Duty paid was in the sum of €[redacted] at the non-residential Stamp Duty rate of 2%, based on the purchase price of the property of [redacted].

27. Thereafter, on **8 December 2017**, the Appellant received correspondence and a certificate from Teagasc informing him that he had successfully completed the QQI Level 6 Specific Purpose Award in Farm Administration, a qualification which meets the requirements for "*the Young Farmers Scheme, National Reserve, Stamp Duty Relief Exemption and higher rate of TAMS grant*".

28. Section 159A (1) SDCA 1999 provides that a claim for a repayment of Stamp Duty paid by a taxpayer must be made to the Respondent, within four years of, *inter alia*, "*the date the young trained farmer becomes the holder of the required educational qualification*".

29. In this instance, the Appellant received a certificate from Teagasc informing him that he had successfully completed the QQI Level 6 Specific Purpose Award in Farm Administration, a qualification which meets the requirements for "*the Young Farmers Scheme, National Reserve, Stamp Duty Relief Exemption and higher rate of TAMS grant*", on **8 December 2017**.

30. The Respondent had all the information which it required to enable it to determine if and to what extent a repayment of tax was due on **13 January 2023**, following the delivery of the relevant claim to repayment by the Appellant. Having established that there is a valid claim, the provisions of section 159A (1) SDCA1999 must be applied.

31. The Commissioner is satisfied that the requirement under section 159A (1) SDCA 1999 that a claim for repayment of Stamp Duty be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. The relevant timeframe herein, is four years from the date the Appellant received a certificate, as aforementioned. In accordance with the documents submitted in this appeal, the certificate was received on **8 December 2017**. Therefore, the Appellant was obliged to make any claim for a repayment of Stamp Duty by **8 December 2021**.

32. The Commissioner notes the submission of the Appellant's representative that "*We are advocating on behalf of our client who qualified for the relief but has lost out on this for failure to meet the four year refund date rather than any underlying difficulty with his qualifying conditions. If he had been in control of applying for the refund, he would have done so himself, but he was relying on others (namely our firm) to apply for the relief. Could you please consider issuing the refund as he is of limited financial means with a young family and is starting out in farming and the tax relief would be of great benefit to him…the solicitor who acts for [the Appellant] is conscientious with respect to tax matters and has assisted in his 16 years of practice in general practice with 1000s of clients to act in a tax compliant manner and is also scrupulous about personal taxes and VAT matters with respect to his own practice. Omissions can arise given the volume of casework and this was just one of those cases which "fell through the cracks" of practice given the fact that a previous solicitor was dealing with the matter. We would request that consideration be given to the otherwise compliant nature of the firm and the assistance given to Revenue in practice VAT, management of stamp duty and CAT through the practice*".

33. The use of the word "shall" as set out in section 159A (1) SDCA 1999, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the 4 year rule might be mitigated. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 159A (1) SDCA1999.

34. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of a 4 year statutory limitation period. These determinations, may be found on the Commission website[1].

35. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claim for a repayment of Stamp Duty, as section 159A (1) TCA 1997 does not allow the Respondent, or the Commission on appeal, to take into account any mitigating circumstances, for the failure to comply with the mandated timeframe. The Commissioner appreciates that this is frustrating and disappointing for the Appellant, who would have otherwise been entitled to the claim for a repayment of Stamp Duty, but for the timeframe.

36. 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

[1] www.taxappeals.ie

satisfied that the Respondent was correct in refusing the Appellant's claim for a repayment of Stamp Duty in the amount of €[redacted].

37. Finally, the Appellant has no doubt been advised by his Solicitors as to any claim that could be made with respect to their default, but that is not a matter that falls within the jurisdiction of the Commission. It is important to state that the Commissioner's jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J. at paragraph 64 of the Court of Appeal's decision in *Kenny Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the liability imposed by the Respondent was correct in law, and has no equitable jurisdiction or broader power to consider circumstances not directly pertaining to the imposition of the charge. Accordingly, the Commissioner makes no finding in relation to this matter.

Determination

38. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant repayment of Stamp Duty is payable.

39. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

40. This appeal is hereby determined in accordance with Part 40A TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Claire Millrine
Appeal Commissioner
25 August 2023