



**26TACD2017**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The request for repayment relates to mortgage interest relief in accordance with section 244 TCA 1997 and to the tax years of assessment 2007-2011 inclusive. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

**Background**

2. The Appellant purchased her home in December 2006 and commenced mortgage loan repayments in 2007. The Appellant stated that she was unaware that mortgage interest relief was not being applied to her mortgage until her Bank wrote to her in March 2016 stating that they had made an error in relation to the property the subject of the mortgage. The Appellant stated that the letter from the Bank informed her that the loan had been incorrectly designated as a loan relating to rental property (as opposed to a loan in relation to a primary residence), that the Bank had corrected the error and that the Appellant may wish to contact the Respondent in relation to the matter of mortgage interest relief in respect of the mortgage.



3. On foot of the letter from the Bank dated March 2016, the Appellant applied for tax relief at source in April 2016 together with a claim for mortgage interest relief in accordance with s.244 TCA 1997 for the years in which she would have been entitled to avail of the relief. The Respondent granted tax relief at source in respect of 2016 and refunded arrears of relief for the years 2012 to 2015 inclusive. The Respondent refused repayment of arrears of relief for the years 2007 to 2011 on the basis that a valid claim for repayment was not made within four years after the end of the chargeable period to which the claim related in accordance with s.865(4) TCA 1997. The Appellant appealed the Respondent's refusal.

### **Legislation**

4. The relevant legislation in this appeal is section 865 TCA 1997, section 244 TCA 1997, section 244A TCA 1997 and S.I. No. 558/2001, set out at **Appendix I** below.

### **Submissions**

5. The Appellant submitted that she suffered illness in 2007 and was unwell in the years following. She stated that she paid taxes all her working life and that the loss of mortgage interest relief in respect of the years 2007-2011 represented a substantial loss of income to her. The Appellant has two dependent children of school age. She stated that the condition of the property in which she lives is adverse to her health. She stated that if she were to receive the relief for the years 2007 – 2011 she would be able to make positive changes to her living environment. She contended that had the property been correctly designated by the Bank as a primary residence, she would have become aware of her entitlement to mortgage interest relief in time to claim her full entitlement. The Appellant submitted that this appeal involved exceptional circumstances and that it would be unfair to deny the arrears of relief for 2007-2011 in light of these circumstances. The Appellant in her submissions stated; *'In my view, to apply the arbitrary cut-off point of 4 years in this case is extremely unjust and is preventing me from experiencing what is my entitlement. In this case I do not believe that the law should penalise me due to the 4-year window as such a time period is arbitrary in nature.'* The Appellant accepted that she claimed mortgage interest relief for the first time in April 2016. The Appellant did not challenge the meaning or



interpretation of the four-year rule per s.865(4) TCA 1997 but submitted that the limitation period should not apply in this appeal.

6. The Respondent submitted that the onus was on the Appellant to claim the relief by filing the requisite TRS documentation and that this had not been done within time. The Respondent declined to process the overpayment on the basis that a valid claim for repayment was not made by the Appellant within the four-year limitation period per section 865(4) TCA 1997. The Respondent submitted that in any given tax year, the onus was on the taxpayer to make any valid claims for repayment within the statutory limitation period. The Respondent's position was that no valid claim for repayment had been made by the Appellant within the four-year limitation period contained in section s.865(4) TCA 1997 and that as a result, the repayment claim in respect of the tax years of assessment 2007 -2011 was out of time.

### **Analysis and findings**

7. The Appellant 's claim for mortgage interest relief in respect of the tax years 2007-2011 was made for the first time by the Appellant in April 2016. Thus the Appellant's claim for repayment in respect of the tax years 2007-2011 was out of time in accordance with section 865(4) TCA 1997 which provides; '*... a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made - ..... within 4 years, ..... after the end of the chargeable period to which the claim relates*'. [emphasis added]
8. In my view, the use of the word '*shall*' per section 865(4) TCA 1997, 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 four-year rule might be mitigated. In short, I do not consider that I have the authority or discretion to direct that a repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.
9. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017 and 11TACD2017 may be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).





## **Conclusion**

10. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside of the four-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax years of assessment 2007-2011, is out of time in accordance with the provisions of section 865(4) TCA 1997.
11. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**APPEAL COMMISSIONER**

**November 2017.**

***The parties to this appeal have not requested the Appeal Commissioner to state and sign a case for the opinion of the High Court***





## Appendix I - Legislation

### Section 865 TCA 1997 - Repayment of Tax

....

*“valid claim” shall be construed in accordance with paragraph (b).*

*(b) For the purposes of subsection (3) –*

*(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –*

*[(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and*

*(II) the repayment treated as claimed, if due—*

- A. would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or*
- B. would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time,*

*(ii) where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and*

*(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.*

*(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.*



....

....

*[(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.]*

*[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]) a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.*

*(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]*

*(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –*

- i. in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,*
- ii. in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and*
- iii. in the case of claims made –*

*under subsection (2) and not under any other provision of the Acts, or (ii) in relation to any chargeable period beginning on or after 1 January 2003,*

*within 4 years,*

*after the end of the chargeable period to which the claim relates.*

....

....

*(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision].*

....



## Section 244 TCA 1997 – Relief for interest paid on certain home loans

*(1)(a) In this section –*

*[“dependent relative”, in relation to an individual, means [any of the persons mentioned in paragraph (a) or (b) of subsection (2), or in paragraph (a) or (b) of subsection (2A), of section 466] in respect of whom the individual is entitled to a tax credit under that section;]*

*[“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;*

*“EEA state” means a state (including the State) which is a contracting party to the EEA Agreement;]<sup>2</sup>*

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

*“qualifying interest”, in relation to an individual and a year of assessment, means the amount of interest paid by the individual in the year of assessment in respect of a qualifying loan;*

*“qualifying loan”, in relation to an individual, means a loan or loans which, without having been used for any other purpose, is or are used by the individual solely for the purpose of defraying money employed in the purchase, repair, development or improvement of a qualifying residence or in paying off another loan or loans used for such purpose;*

*“qualifying residence”, in relation to an individual, means a residential premises [situated in an EEA state]<sup>4</sup> which is used as the sole or main residence of –*

*(i) the individual,*

*(ii) [ a former or separated spouse of the individual, or a former civil partner or a civil partner from whom the individual is living separately[...]<sup>6</sup> in circumstances where reconciliation is unlikely,]<sup>5</sup> or*

*(iii) a person who in relation to the individual is a dependent relative, and which is, where the residential premises is provided by the individual, provided rent-free and without any other consideration;*



*["relievable interest", in relation to an individual and a year of assessment, means –*

*(i) in the case of –*

*(I) an individual assessed to tax for the year of assessment in accordance with [section 1017 or 1031C],<sup>2</sup> or*

*(II) [a widowed individual or a surviving civil partner,]<sup>2</sup>*

*the amount of qualifying interest paid by the individual in the year of assessment or, if less, [€6,000],*

*(ii) in the case of any other individual, the amount of qualifying interest paid by the individual in the year of assessment or, if less, [€3,000],*

*but, notwithstanding the preceding provisions of this definition and subject to paragraph (c), as respects the first [7 years] of assessment for which there is an entitlement to relief under this section in respect of a qualifying loan [taken out on or after 1 January 2004 and on or before [31 December 2012], "relievable interest", in relation to an individual and a year of assessment, shall mean –*

*(iii) in the case of –*

*(I) an individual assessed to tax for the year of assessment in accordance with [section 1017, or 1031C]*

*or*

*(II) [a widowed individual or a surviving civil partner,]*

*the amount of qualifying interest paid by the individual in the year of assessment or, if less, [€20,000],*

*(iv) in the case of any other individual, the amount of qualifying interest paid by the individual in the year of assessment or, if less, [€10,000]*

*"residential premises" means –*

*(i) a building or part of a building used, or suitable for use, as a dwelling, and*

*(ii) land which the occupier of a building or part of a building used as a dwelling has for the occupier's own occupation and enjoyment with that building or that part of a building as its garden or grounds of an ornamental nature;*





*“separated” means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent.*

*(b) For the purposes of this section, in the case of an individual assessed to tax for a year of assessment in accordance with [section 1017 or 1031C.], any payment of qualifying interest made by the individual’s [spouse or civil partner], in respect of which the individual’s [spouse or civil partner] would have been entitled to relief under this section if that [spouse or civil partner] were assessed to tax for the year of assessment in accordance with [section 1016 (apart from subsection (2) of that section) or section 1031B (apart from subsection (2) of that section)] shall be deemed to have been made by the individual.*

*[(c) The number of years of assessment for which the amount of relievable interest is to be determined by reference to [paragraph] (iii) or (iv) of the definition of “relievable interest” shall be reduced by one year of assessment for each year of assessment in which an individual was entitled to relief for a year of assessment before the year 1997–98 under section 76(1) or 496 of, or paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967.]*

*[(1A) (a) This section shall not apply as respects interest paid on or after 1 May 2009.*

*[(b) Notwithstanding paragraph (a), this section shall continue to apply for the year of assessment 2010 and subsequent years of assessment up to and including the year of assessment 2017 in respect of qualifying interest paid in respect of a qualifying loan taken out on or after 1 January 2004 and on or before 31 December 2012.]<sup>26</sup>*

*(c)(i) Paragraph (b) shall not apply in respect of qualifying interest attributable to that part of a qualifying loan used to repay another qualifying loan (in this paragraph referred to as an “existing qualifying loan”) unless the qualifying interest on that existing qualifying loan would, had the existing qualifying loan not been repaid, have been interest referred to in [paragraph (b)].*

*(ii) Where subparagraph (i) applies, the number of years of assessment for which there is an entitlement to relief under this section in respect of qualifying interest attributable to that part of a qualifying loan used to repay the existing qualifying loan shall not exceed the number of years of assessment for which relief would have applied had the existing qualifying loan not been repaid.*

*(d) As respects the year of assessment 2009 only, the definition of “relievable interest” is amended—*

*(i) in paragraph (i) by substituting “the amount of qualifying interest paid by the individual in the period 1 January 2009 to 30 April 2009 or, if less, €2,000 and the amount of qualifying interest paid by the individual in the period 1 May 2009 to 31 December 2009 or, if less,*



€4,000” for “the amount of qualifying interest paid by the individual in the year of assessment or, if less, €6,000”, and

(ii) in paragraph (ii) by substituting “the amount of qualifying interest paid by the individual in the period 1 January 2009 to 30 April 2009 or, if less, €1,000 and the amount of qualifying interest paid by the individual in the period 1 May 2009 to 31 December 2009 or, if less, €2,000” for “the amount of qualifying interest paid by the individual in the year of assessment or, if less, €3,000”.]<sup>28</sup>

[(2) (a) In this subsection “appropriate percentage”, in relation to a year of assessment, means—

(i) as respects qualifying interest to which [subsection (1A)(b)] applies—

(I) where relievable interest is determined by reference to paragraph (i) or (ii) of the definition of “relievable interest”, 15 per cent for that year, and

(II) where relievable interest is determined by reference to paragraph (iii) or (iv) of the definition of “relievable interest”:

(A) 25 per cent for the first and second years of assessment for which there is an entitlement to relief under this section,

(B) 22.5 per cent for the third, fourth and fifth years of assessment for which there is an entitlement to relief under this section, and

(C) a percentage equal to the standard rate of tax for the sixth and seventh years of assessment for which there is an entitlement to relief under this section,

and

[(ii) notwithstanding subparagraph (i), 30 per cent for the year of assessment 2012 and subsequent years of assessment up to and including the year of assessment 2017 as respects qualifying interest paid on a qualifying loan taken out on or after 1 January 2004 and on or before 31 December 2008 to purchase an individual’s—

(I) first qualifying residence, or

(II) second or subsequent qualifying residence but only where the first qualifying residence was purchased on or after 1 January 2004.]<sup>30</sup><sup>31</sup>

(b) Where an individual for a year of assessment proves that in the year of assessment such individual paid an amount of qualifying interest, then, the income tax to be charged, other than in accordance



with section 16(2), on such individual for that year of assessment shall be reduced by an amount which is the lesser of –

(i) the amount equal to the appropriate percentage of the relievable interest, and

(ii) the amount which reduces that income tax to nil.

(c)[Except for the purpose of section 188], no account shall be taken of relievable interest in calculating the total income of the individual by whom the relievable interest is paid.

(3) [(a) Where the amount of relievable interest is determined by reference to [paragraph] (iii) or (iv) of the definition of “relievable interest”, then, notwithstanding any other provision of the Tax Acts, in the case of an individual who has elected or could be deemed to have duly elected to be assessed to tax for the year of assessment in accordance with [section 1017 or 1031C], where either –

(i) the individual, or

(ii) the individual's [spouse or civil partner],

was previously entitled to relief under this section or under section 76(1) or 496 of, or paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967, and the other person was not so entitled –

(I) the relief to be given under this section, other than that part of the relief (in this subsection referred to as “the additional relief”) which is represented by the difference between the relievable interest and the amount which would have been the amount of the relievable interest if this had been determined by reference to [paragraph] (iii) or (iv) of that definition, shall be treated as given in equal proportions to the individual and that individual's [spouse or civil partner] for that year of assessment, and

(II) the additional relief shall be reduced by 50 per cent and the additional relief, as so reduced, shall be given only to the person who was not previously entitled to relief under this section or under section 76(1) or 496 of, or paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967.]

(b)Paragraph (a) shall apply notwithstanding that –

(i) [section 1023 or 1031H] may have applied for the year of assessment, and

(ii) the payments in respect of which relief is given may not have been made in equal proportions.



*(4)(a) Notwithstanding anything in this section, a loan shall not be a qualifying loan, in relation to an individual, if it is used for the purpose of defraying money applied in –*

*(i) the purchase of a residential premises or any interest in such premises from an individual who is the spouse of the purchaser,*

*(ii) the purchase of a residential premises or any interest in such premises if, at any time after the 25th day of March, 1982, that premises or interest was disposed of by the purchaser or by his or her spouse or if any interest which is reversionary to the interest purchased was so disposed of after that date, or*

*(iii) the purchase, repair, development or improvement of a residential premises, and the person who, directly or indirectly, received the money is connected with the individual and it appears that the purchase price of the premises substantially exceeds the value of what is acquired or, as the case may be, the cost of the repair, development or improvement substantially exceeds the value of the work done.*

*(b) Subparagraphs (i) and (ii) of paragraph (a) shall not apply in the case of a husband and wife who are separated.*

*(5) Where an individual acquires a new sole or main residence but does not dispose of the previous sole or main residence owned by the individual and it is shown to the satisfaction of the inspector that it was the individual's intention, at the time of the acquisition of the new sole or main residence, to dispose of the previous sole or main residence and that the individual has taken and continues to take all reasonable steps necessary to dispose of it, the previous sole or main residence shall be treated as a qualifying residence, in relation to the individual, for the period of 12 months commencing on the date of the acquisition of the new sole or main residence.*

*(6)(a) In this subsection, "personal representative" has the same meaning as in [section 799](#).*

*(b) Where any interest paid on a loan used for a purpose mentioned in the definition of "qualifying loan" by persons as the personal representatives of a deceased person or as trustees of a settlement made by the will of a deceased person would, on the assumptions stated in paragraph (c), be eligible for relief under this section and, in a case where the condition stated in that paragraph applies, that condition is satisfied, that interest shall be so eligible notwithstanding the preceding provisions of this section.*

*(c) For the purposes of paragraph (b), it shall be assumed that the deceased person would have survived and been the borrower and if, at the time of the person's death, the residential premises was used as that person's sole or main residence, it shall be further assumed that the person would have continued so to use it and the following condition shall then apply, namely, that the residential premises was, at*



*the time the interest was paid, used as the sole or main residence of the deceased's [widow, widower or surviving civil partner, or of any dependent relative of the deceased].*

*[(7) This subsection shall apply to a loan taken out and used by an individual—*

*(a) on or after 1 January 2012 and on or before 31 December 2012 solely for the purpose of defraying money employed in the purchase of an estate or interest in the land referred to in paragraph (b) and in respect of which the permission in subsection (10) applies but only where a residential premises, which is a qualifying residence in relation to that individual, is constructed on that land, or*

*(b) on or after 1 January 2012 and on or before 31 December 2013 solely for the purpose of defraying money employed in the construction of a residential premises which is a qualifying residence in relation to that individual on land—*

*(i) in respect of which he or she has, on or after 1 January 2012 and on or before 31 December 2012, acquired an estate or interest, and*

*(ii) the acquisition of which was financed by way of the loan referred to in paragraph (a).*

*(8) This subsection shall apply to a loan in respect of which there was in place, on or after 1 January 2012 and on or before 31 December 2012, an agreement evidenced in writing to provide that loan to an individual and—*

*(a) part of that loan is used in the period 1 January 2012 to 31 December 2012, and*

*(b) the balance of that loan is used in the period 1 January 2013 to 31 December 2013,*

*by that individual solely for the purpose of defraying money employed in the repair, development or improvement of a residential premises which is a qualifying residence in relation to that individual.*

*(9) Any loan to which subsection (7) or (8)(b) applies shall, for the purposes of this section, be deemed to be a qualifying loan taken out on or after 1 January 2012 and on or before 31 December 2012.*

*(10) Relief shall not be granted in respect of interest paid on any loan to which subsection (7) or (8) applies unless any permission required under the Planning and Development Act 2000 was granted on or before 31 December 2012 in respect of such construction, repair, development or improvement, as appropriate, and such permission has not ceased to exist.]*





## Section 244A TCA 1997 – Application of s.244 (relief for interest paid on certain home loans) of Principal Act

*(2)(b) This section provides for a scheme whereby relief due under section 244 shall, in certain circumstances, be given by way of deduction at source (“the tax relief at source scheme”) under subsection 2(a) and in no other manner.*

## S.I. No. 588/2001 – Mortgage Interest (Relief at Source) Regulations 2001

*7(1) The entitlement of an individual to deduct and retain an amount from a payment of a qualifying mortgage interest referred to in subsection (2)(a) of the principal section shall –*

- (a) apply subject to the fulfilment by the individual of the requirements of this Regulation*
- (b) apply subject to the provisions of Regulations 8 and 9 of these Regulations, and*
- (c) be given effect to by the granting of relief, in such manner as may be agreed with the Revenue Commissioners, by a qualifying lender in accordance with these Regulations*

*(2) In order to obtain relief under subsection (2)(a) of the principal section, an individual shall, on drawing down a qualifying mortgage loan from a qualifying lender, make a declaration to the Revenue Commissioners on a prescribed form provided for that purpose—*

- (a) that the loan is in respect of the purchase, repair, development or improvement of the individual's sole or main residence, and*
- (b) that the particulars given on the form are correct.*

*(3) The individual shall also undertake, on the form referred to in paragraph (2) of this Regulation, to notify the Revenue Commissioners whenever any of the following occur, that is—*

- (a) a change in the personal status of the individual, and*
- (b) a change in the status of the property which would affect the amount of relievable interest in relation to the individual.*

*(4) The completed form shall be sent by the individual to the Revenue Commissioner*

