



63TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal against a Notice of Assessment to Capital Gains Tax for the year 2004 dated 4 May 2018. The amount of tax is €15,308, representing capital gains tax of 20% on a net chargeable gain of €76,544. The Appellant appealed the assessment.

Background

2. The Appellant disposed of an asset, being a residential premises situate at [ADDRESS *redacted*], Galway in 2004. The Appellant was selected for a revenue intervention as the disposal was not returned to the Revenue Commissioners. During the course of the revenue intervention, an agent acting on behalf of the Appellant (NAME *redacted*) submitted a capital gains tax computation which



calculated a net chargeable gain of €24,944 and capital gains tax of €4,988.73. The computation was based on sales consideration of €300,000, cost of acquisition of IR£50,000, incidental costs of acquisition and disposal of €6,630, enhancement expenditure of €50,000, period of ownership of 12 years and period of occupation of 10 years. Thereafter, a Notice of Assessment to Capital Gains Tax for the year 2004 was made on the Appellant. The Notice of Assessment was based on sales consideration of €300,000, cost of acquisition of IR£50,000, incidental costs of acquisition and disposal of €6,630, enhancement expenditure of €50,000, period of ownership of 12 years and period of occupation of 6 years. The Appellant appealed the assessment to the Tax Appeals Commission by Notice of Appeal dated 31 May 2018.

3. In the Notice of Appeal submitted by the Appellant to the Tax Appeals Commission, the Appellant states that she had understood that the capital gains tax on the disposal of the residential premises in Galway had been returned and paid to the Revenue Commissioners. In the Notice of Appeal, the Appellant describes the personal difficulties she was experiencing at the time of the disposal of the residential premises, and that those personal difficulties, together with the passage of time, contributed to her failure to provide details on the disposal or produce documents to support her position during the revenue intervention. In the Notice of Appeal, the Appellant states *‘I realise an error was made and I am willing to pay the amount due’* and seeks to have the amount of the capital gains tax revised so the Appellant *‘can make affordable repayments’*.
4. In the Statement of Case submitted by the Appellant to the Tax Appeals Commission, the Appellant states that she purchased the residential premises in 1994 and had intended to reside in the premises but instead moved to, and married in, the UK. The Appellant states that while residing in the UK between 1995 and 1999 the residential premises in Galway was rented. The Appellant states that a residential premises at [ADDRESS redacted], Mayo was purchased in 2000 and



that following major structural works the Appellant, her husband and daughter moved to Mayo in 2001. In the Statement of Case, the Appellant states '*I am willing to pay what is owed*' and seeks to have the amount of the capital gains tax revised to '*a more realistic figure... so that I can organise to make affordable payments*'.

5. At the hearing, the Appellant described the personal difficulties she experienced in or around the time of the disposal and that she was appealing the assessment as she wished to ensure that she had sufficient funds available to continue to support her daughter in third-level education. The Appellant stated that her personal difficulties had negatively impacted her daughter during her teenage years and the Appellant's priority, now that she had overcome her personal difficulties, was to support her daughter in her educational pursuits.
6. At the hearing, the Appellant stated that she purchased the residential premises in Galway in or around 1992 with a mortgage of IR£50,000. The Appellant stated that she married in [DATE redacted] 1993 and moved to the UK with her husband at that time. Her daughter was born in the UK in [DATE redacted] 1997. The family moved back to Ireland in 1999. The Appellant stated that the family occupied the residential premises in Galway from 1999 until in or around September 2002, when the family moved to a residential premises in Mayo, which coincided with her daughter starting primary school. The residential premises in Galway was disposed of by the Appellant in 2004. The foregoing represented the Appellant's best recollection of the relevant dates. The Revenue Commissioners submitted that tax records indicate that the residential premises in Galway was occupied by other persons during the period 1994 to 2001.
7. At the hearing, the Appellant stated that she could not recollect the exact sales consideration of the residential premises in Galway, however, it was not €300,000 as described in the capital gains tax computation submitted by her agent. The

Appellant submitted that the sales consideration was in or around €275,000. No documentary evidence was presented in support of this submission.

8. At the hearing, the Appellant described that renovations on the residential premises in Galway were carried out in or around 1992, 1993 and 1994. The Appellant described the renovations as including replacing windows, replacing the kitchen and replacing the bathroom and carrying out repairs following a leak, which the Appellant recollected was carried out before her marriage in [DATE *redacted*] 1993. The expenditure on the renovations in the capital gains tax computation submitted by her agent was €50,000. The Appellant submitted that the amount of expenditure on renovations could have been higher, however, no documentary evidence was presented by the Appellant to support any expenditure on the renovations.
9. The Notice of Assessment was based on sales consideration of €300,000, cost of acquisition of IR£50,000, incidental costs of acquisition and disposal of €6,630, enhancement expenditure of €50,000, period of ownership of 12 years and period of occupation of 6 years. At the hearing, the Revenue Commissioners were willing to accept, based on the statements made by the Appellant, that the sales consideration was €275,000 and the cost of acquisition was IR£62,500 (on the assumption that the standard residential mortgage lending requirements in or around 1992 was for the purchaser to have a 20% deposit). Following the hearing, the Revenue Commissioners submitted a revised capital gains tax computation which calculated a net chargeable gain of €45,199 and capital gains tax of €9,039.80.

Legislation

10. Section 552 of the Taxes Consolidation Act, 1997 provides:

“552. Acquisition, enhancement and disposal costs

(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to –

- (a) the amount or value of the consideration in money or money’s worth given by the person or on the person’s behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,*
- (b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person’s behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person’s title to, or to a right over, the asset, and*
- (c) the incidental costs to the person of making the disposal.*

...”

11. Section 604 of the Taxes Consolidation Act, 1997 provides:

“604. Disposals of principal private residence

(1) In this section, “the period of ownership” –

- (a) where the individual has had different interests at different times, shall be taken to begin from the first acquisition taken into account*



in determining the expenditure which under the Capital Gains Tax Acts is allowable as a deduction in computing the amount of the gain to which this section applies, and

(b) for the purposes of subsections (3) to (5), shall not include any period before the 6th day of April, 1974.

(2) This section shall apply to a gain accruing to an individual on the disposal of or of an interest in –

(a) a dwelling house or part of a dwelling house which is or has been occupied by the individual as his or her only or main residence, or

(b) land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the site of the dwelling house) not exceeding one acre;

but, where part of the land occupied with a residence is and part is not within this subsection, then, that part shall be taken to be within this subsection, which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(3) The gain shall not be a chargeable gain if the dwelling house or the part of a dwelling house has been occupied by the individual as his or her only or main residence throughout the period of ownership or throughout the period of ownership except for all or any part of the last 12 months of that period.

(4) Where subsection (3) does not apply, such portion of the gain shall not be a chargeable gain as represents the same proportion of the gain as the length of the part or parts of the period of ownership during which the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence, but inclusive of the last 12 months of the period of ownership in any event, bears to the length of the period of ownership.

...”



Burden of Proof

12. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [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*”.
13. The Appellant, being the person with access to the facts and documents relating to her tax affairs, and the taxation system developed on the premise of self-assessment, must present evidence and produce documents in support of the appeal in order to meet the burden of proof. If an Appellant cannot demonstrate that an assessment is incorrect, the assessment stands.

Analysis and Findings

14. The amount of a gain accruing on the disposal of an asset is computed in accordance with the provisions of the Tax Acts. Sums are allowable as a deduction from the sales consideration received. These sums can be described in general terms under headings of cost of acquisition, incidental costs of acquisition, enhancement expenditure (reflected in the asset at the time of disposal) and incidental costs of disposal. There are also exemptions and reliefs available under the Tax Acts including the annual exemption of €1,270 (under section 601 of the Taxes Consolidation Act, 1997) and principal private residence relief (under section 604 of the Taxes Consolidation Act, 1997).

15. In this appeal, it is not disputed that there was a disposal of an asset by the Appellant, being a residential premises situate at [ADDRESS *redacted*], Galway. The amount of the gain accruing on the disposal is computed as sales consideration less allowable deductions. Exemptions and/or reliefs may be available which may adjust the amount of the chargeable gain. In this appeal, the Appellant seeks to avail of principal private residence relief under section 604.
16. Although there are discrepancies in the relevant dates provided by the Appellant, I accept, having heard from the Appellant at the hearing, the Appellant was truthful in her endeavours to best recollect the events surrounding the acquisition and disposal of the residential premises in Galway, against the background of the personal difficulties experienced by the Appellant. In the Notice of Appeal and Statement of Case submitted to the Tax Appeals Commission, the Appellant acknowledged that capital gains tax was owing but was seeking forbearance on the collection of the tax. The Appeal Commissioners have no function in claims of inability to pay or seeking payment arrangements with the Revenue Commissioners. The appeals process is engaged by an Appellant to show that the relevant tax is not payable and the burden of proof rests on the Appellant.
17. Principal private residence relief applies on the basis of the chargeable gain not being a chargeable gain if the period of ownership of a dwelling house and the period of occupation of the dwelling house as a sole or main residence is the same period. If the period of ownership and the period of occupation is not the same period, then the relief applies on the basis of the chargeable gain not being a chargeable gain for that length of time during the period of ownership of the dwelling house for which the dwelling house was occupied as a sole or main residence. In this appeal, the Appellant submits that principal private residence relief should be applied to the chargeable gain on the disposal of the residential premises in Galway as the premises was occupied as the sole or main residence of the Appellant during the period of ownership. At the hearing, the Appellant



described periods during which the residential premises in Galway was not occupied by the Appellant as her sole or main residence. The Revenue Commissioners submitted that tax records indicate that the residential premises in Galway was occupied by other persons during the period 1994 to 2001. In the circumstances, and based on a consideration of the submissions, material and evidence provided by the parties, I am satisfied that for the purposes of principal private residence relief the Appellant's period of ownership was 12 years and the Appellant's period of occupation was 6 years in respect of the residential premises in Galway.

18. In my view, and based on a consideration of the submissions, material and evidence provided by the parties, a deduction of €50,000 for enhancement expenditure is reasonable particularly given that the renovations were carried out in or around 1992, 1993 and 1994, and in the absence of corroborating documentary evidence.

Determination

19. For the reasons outlined above, I determine that the assessment should be reduced to a net chargeable gain of €45,199 and capital gains tax of €9,039.80.
20. This appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

20th JANUARY 2020

