



92TACD2020

Redacted

Appellant

v

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a decision made by the Respondent in determining that the Appellant is a person liable to account for Local Property Tax (LPT) for the years 2015 et seq.
2. By way of a determination dated 15 November 2017, the Respondent determined that the Appellant is a liable person for LPT purposes in relation to his property at **Address Redacted** in respect of the years 2015 et seq.

Background

3. The Appellant sought and obtained an exemption from LPT in respect of his property in accordance with Section 8 of the Finance (Local Property Tax) Act 2012 (as amended).
4. The Appellant moved to live and work in the USA in March 2014.
5. The Respondent submits that the Appellant is no longer entitled to an exemption under Section 8 of the Finance (Local Property Tax) Act 2012 (as amended) because he fails to comply with Section 8(3)(b) of the Act for the years 2015 et seq., having resided in the USA since March 2014.

Legislation

6. 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.”



7. 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

Submissions



8. The Appellant does not accept the Respondent's assertion that

"In the absence of a definition in the LPT Act for sole or "main residence" it is considered to have its normal meaning which is a place where a person solely or mainly resides. As you are not currently resident in Ireland this property cannot be considered to be your sole or main residence".

9. The Appellant proffers the notion that the Respondent has arbitrarily considered a new definition for sole or main residence by asserting that his residency in the USA means that his property in Ireland cannot be considered his sole or main residence. The Appellant further asserts that the conjunction of "main residence" with mainly resides is also arbitrary.
10. The Appellant further elaborates on the possible knock-on-effects of the Respondent's decision in relation to other matters including residency.
11. The Appellant submits that the Legislature in enacting the law could have defined "main residence" but chose not to do so and offers the notion for not doing as to include people like himself or those on long term vacations who pay taxes, receive mail, pay water and electricity charges, TV licences etc. at an address, but for a variety of reasons do not on a daily basis, leave for work from the address.
12. The Appellant expresses, that he is currently temporarily abroad, visits the property when he can, keeps the property vacant and continues to maintain it.
13. The Appellant further submits that he has only one property anywhere and that property is the one in Ireland; the subject of this appeal for retention of the exemption to pay LPT in accordance with Section 8 of the Local Property Tax Act.
14. The Respondent submits that an exemption under Section 8 of the Finance (Local Property Tax) Act 2012 (as amended) is no longer applicable because he fails to comply with Section 8(3)(b) of the Act for the years 2015 et seq., having resided in the USA since March 2014.
15. The Respondent elaborates that the Appellant ceased to use the property as his sole or main residence when he moved to live and work in the USA in March 2014 and therefore fails to comply with Section 8(3)(b) of the Act for the years 2015 et seq. and is no longer entitled to the exemption.

Conclusion



16. In this appeal I have considered the wording of Section 8 (3)(b) in deciding if the Appellant should retain the exemption from LPT viz. –

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

There is no dispute at all that the provisions of the LPT Act in general apply to the property in question. The Respondent however has granted an exemption to LPT and seeks to withdraw that exemption because the Appellant has resided in the USA since April 2014. On the other hand, the Appellant has declared that he only has one property and is temporarily absent from the property with no residency entitlement in the USA.

17. The question, therefore, is not necessarily whether it was his only or main residence during that period, but whether it was used as such. The word used does not imply any necessity for successive or permanent deployment.
18. As the Appellant works and resides in the USA the property can hardly be regarded as his sole residence.
19. In the absence of any specific Irish authority, it is possible to discern, based on the volume of jurisprudence emanating from the United Kingdom, that the interpretation of a similar statutory provision has caused difficulties specifically in context of the meaning of “main residence”
20. The question of “*main*” residence is not necessarily the residence where the individual spends the majority of their time, although it commonly will be. This question was considered in the **UK case of Frost v Feltham (55TC10)** and the High Court decision in that case sets out a useful summary of the criteria to be applied.

Nourse J comments in the decision,

“If someone lives in two houses the question, which does he use as the principal or more important one, cannot be determined solely by reference to the way in which he divides his time between the two.”

21. There is no definition of the word main residence in the LPT Act, therefore following the normal rules of construction these words have to be given their everyday meaning. The Respondent decided that the normal meaning for sole or main residence is a place where a person solely or mainly resides. The Respondent consequently determined that the Appellant is a liable person for LPT purposes in relation to his property.
22. However, in linking ***sole and main*** together the Respondent has ignored the concept of used as a main residence in making its determination. The Oxford English dictionary describes main as the “principal” or “most important”. I am of the view that the





Appellant regards his property in Ireland as his principal or most important residence.

23. This view is supported by the important facts that the Appellant is not entitled to residency in the USA, regards his status as being temporarily abroad, visits the property when he can, keeps the property vacant and continues to maintain it.
24. I find therefore on the facts of the case that the property is used as the Appellant's main residence and he is entitled to continue to avail of the exemption to LPT as provided for in Section 8 of the Finance (Local Property Tax) Act 2012 (as amended).
25. The appeal is therefore determined in accordance with TCA, section 949AL.

Charlie Phelan
Appeal Commissioner
7 January 2020

