



Between

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**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter “the TAC”) as an appeal against an amended Notice of Assessment for 2017 which was raised by the Revenue Commissioners (“the Respondent”) on 21<sup>st</sup> February 2019.
2. The amount of tax at issue is €3,237.59.
3. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the Taxes Consolidation Act 1997 [hereinafter the “TCA 1997”].

**Background**

4. The Appellant filed his Income Tax return for 2017 on 19th November 2018 which contained a claim for a tax credit pursuant to the Home Renovation Incentive [hereinafter the “HRI”] as follows:

- i. Amount of unused HRI credit carried forward  
from previous year €1,212

ii. Tax credit due for 2017 based on HRI online claim: €2,025

5. The claim for the HRI tax credit by the Appellant was made on foot of having works to the value of €46,500 carried out on his home in 2016 and 2017.
6. On 21<sup>st</sup> February 2019, the Respondent raised an Amended Notice of Assessment for 2017 to the Appellant removing the HRI credit claimed for 2017 on the basis that there were no HRI details on the Respondent's record for the works, the subject matter of the this appeal. Accordingly, no HRI credits had been claimed via the Respondent's portal as required.
7. A Notice of Appeal was lodged by the Appellant dated 24<sup>th</sup> September 2019 appealing the Amended Notice of Assessment issued on 21<sup>st</sup> February 2019.

### **Legislation and Guidelines**

8. The legislation relevant to this appeal is as follows:

Section 477b of the Taxes Consolidation Act 1997 [hereinafter the "TCA1997"]

*(1) In this section—*

*“contractor” means a person engaged by an individual to carry out qualifying work, and who is an accountable person under section 5 of the Value-Added Tax Consolidation Act 2010 and has been assigned a registration number under section 65 of that Act;*

*“housing authority” has the same meaning as it has in the Housing (Miscellaneous Provisions) Act 1992;*

*“PPS number”, in relation to an individual, means the individual's personal public service number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;*

*“qualifying contractor” means a contractor who—*

*(a) complies with the obligations referred to in section 530G or 530H, as the case may be, or*

*(b) in the case of a contractor who is not a subcontractor to whom Chapter 2 of Part 18 applies, complies with the obligations referred to in paragraph (a), other than the obligations referred to in paragraphs (a) and (b) of subsection (1) of section 530G or 530H, as the case may be;*

*“qualifying expenditure”, in relation to an individual, means expenditure incurred by the individual on qualifying work carried out by a qualifying contractor on a qualifying residence;*

*“qualifying residence”, in relation to an individual, means a residential premises situate in the State—*

*(a) which is owned by the individual and which is occupied by the individual as his or her only or main residence,*

*(b) which has previously been occupied as a residence and has been acquired by the individual for the purposes of occupation by the individual as his or her only or main residence on completion of the qualifying work and which is so occupied upon completion,*

*(c) which is owned by an individual and occupied by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004, and where such registration requirements have been complied with by the individual,*

*(d) which is owned by an individual and which is intended by the individual to be occupied by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004, and where such registration requirements have been complied with by the individual and which is occupied by a tenant within 6 months of completion of the qualifying work, or*

*(e) which is owned by a housing authority and for which the housing authority is charging rent pursuant to section 58 of the Housing Act 1966 for the tenancy or occupation thereof by the individual and where the housing authority has given its prior written consent to the individual to qualifying work being carried out on the residential premises.*

*“qualifying work” means any work of repair, renovation or improvement to which the rate of tax specified in section 46(1)(c) of the Value-Added Tax Consolidation Act 2010 applies, and which is carried out on a qualifying residence;*

*“rental unit” means—*

*(a) part of a building used, or suitable for use, as a dwelling which is occupied by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004, and where such registration requirements have been complied with, or*

*(b) part of a building used, or suitable for use, as a dwelling which is owned by an individual and which is intended by the individual to be occupied by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004, and*

*where such registration requirements have been complied with by the individual and which is occupied by a tenant within 6 months of completion of the qualifying work;*

*“residential premises” means—*

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

*(b) 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;*

*“specified amount”, in relation to a payment in respect of qualifying expenditure, means 13.5 per cent of the amount of the payment on which value-added tax is charged, subject to a maximum amount of €4,050, provided that, where more than one payment is made in respect of qualifying expenditure, the aggregate of the specified amounts in respect of those payments shall not exceed €4,050;*

*“tax reference number”, means in the case of an individual, the individual’s PPS number or in the case of a company, the reference number stated on any return of income form or notice of assessment issued to that company by the Revenue Commissioners;*

*‘tenancy’ has the same meaning as it has in the Residential Tenancies Act 2004;*

*‘tenant’ has the same meaning as it has in the Residential Tenancies Act 2004;”,*

*“unique reference number” has the meaning given to it by subsection (4)(b);*

*“VAT registration number”, in relation to a person, means the registration number assigned to the person under section 65 of the Value-Added Tax Consolidation Act 2010.*

*(1A) Where, as a result of the carrying out of qualifying work, a residential premises referred to in paragraph (c) or (d) of the definition of ‘qualifying residence’ in subsection (1) is converted into more than one rental unit, each such rental unit shall be a qualifying residence.*

*(2)(a) This section applies to qualifying expenditure incurred on qualifying work carried out—*

*(i) during the period from 25 October 2013 to 31 December 2018 in the case of a qualifying residence to which paragraph (a) or (b) of the definition of ‘qualifying residence’ in subsection (1) refers,*

*(ii) during the period from 15 October 2014 to 31 December 2018 in the case of a qualifying residence to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, and*

*(iii) during the period from 1 January 2017 to 31 December 2018 in the case of a qualifying residence to which paragraph (e) of the definition of 'qualifying residence' in subsection (1) refers.*

*(b) Where, during the period from 25 October 2013 to 31 December 2013, qualifying work is carried out on a qualifying residence to which paragraph (a) or (b) of the definition of 'qualifying residence' in subsection (1) refers, and where payments in respect of such work are made during that period, any such payments shall be deemed to have been made in the year of assessment 2014.*

*(c) Where, during the period from 15 October 2014 to 31 December 2014, qualifying work is carried out on a qualifying residence to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, and where payments in respect of such work are made during that period, any such payments shall be deemed to have been made in the year of assessment 2015.*

*(d) Notwithstanding paragraph (a), where qualifying work, for which permission is required under the Planning and Development Act 2000, is carried out during the period from 1 January 2019 to 31 March 2019, then provided such permission is granted on or before 31 December 2018, that work shall be deemed to be carried out in the year of assessment 2018.*

*(3)(a) Subject to the provisions of this section, where an individual (in this section referred to as "the claimant"), on making a claim in that behalf, proves that in a year of assessment he or she has made a payment or payments to a qualifying contractor in respect of qualifying expenditure to which this section applies, the income tax to be charged on the claimant, other than in accordance with section 16(2), shall be reduced—*

*(i) in the case of the first subsequent year of assessment, by an amount which is the lesser of—*

*(I) 50 per cent of the specified amount of the payment or payments, and*

*(II) the amount which reduces the income tax of that year of assessment to nil,*

*and*

*(ii) in the case of the next subsequent year of assessment, by an amount which is the lesser of—*

*(I) that part of the specified amount not used in the year of assessment referred to in subparagraph (i), and*

*(II) the amount which reduces the income tax of that year of assessment to nil.*

*(b) Insofar as any part of the specified amount cannot be used under paragraph (a) (in this paragraph referred to as “excess relief”) due to the insufficiency of income tax charged on the claimant in the two years of assessment following the year of assessment in which the payment or payments referred to in paragraph (a) were made, the income tax for the year of assessment following those two years of assessment and so on for each succeeding year of assessment shall be reduced by the excess relief until the full amount of the excess relief has been used, provided that the amount of the excess relief used in any year of assessment shall not be greater than the amount which reduces the income tax charged on the claimant in that year of assessment to nil.*

*(c) The maximum amount of relief available under this section in respect of a qualifying residence shall not exceed €4,050.*

*(ca) Where the qualifying work involves the conversion of a residential premises referred to in paragraph (c) or (d) of the definition of ‘qualifying residence’ in subsection (1) into more than one rental unit, paragraph (c) shall be read as if it applies to each of those units.*

*(d) No claim shall be made under this section unless the payment, or where there is more than one payment the aggregate of those payments, in respect of qualifying expenditure made to a qualifying contractor or qualifying contractors is equal to or greater than €5,000.*

*(e) Where an individual engages a contractor to carry out qualifying work, it shall be the responsibility of that individual to be satisfied that the contractor is a qualifying contractor.*

*(4)(a) Subject to paragraph (c), a contractor shall, before commencing qualifying work under this section, provide to the Revenue Commissioners—*

*(i) the contractor’s name,*

- (ii) the contractor's tax reference number and VAT registration number,*
- (iii) the unique identification number assigned in accordance with section 27 of the Finance (Local Property Tax) Act 2012 to the property on which the qualifying work is to be carried out,*
- (iv) the name of the claimant,*
- (v) the address of the property at which the work will be carried out,*
- (vi) a description of the work to be carried out,*
- (vii) the estimated cost of the work to be carried out, separately identifying the amount of value-added tax,*
- (viii) the estimated duration of the work, including the estimated start date and estimated end date,*
- (ix) confirmation as to whether or not the property referred to in subparagraph (iii) is a residential premises to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, and*
- (x) in the case of a property to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, where such property is, as a result of the carrying out of the qualifying work, to be converted into more than one rental unit, the number of such rental units.*

*(b) On receipt of the information referred to in paragraph (a), the Revenue Commissioners shall—*

*(i) notify the contractor, as the case may be, that—*

*(I) the contractor is a qualifying contractor for the purposes of this section and such notification shall contain a number for the work (in this section referred to as the "unique reference number"), or*

*(II) that the contractor is not a qualifying contractor for the purposes of this section,*

*and*

*(ii) where the contractor is a qualifying contractor, notify the individual concerned accordingly and the notification shall stipulate the unique reference number for the work.*

*(c) Where a qualifying contractor has commenced qualifying work on or after 25 October 2013 but before the electronic systems referred to in subsection (10) are made available by the Revenue Commissioners, the contractor shall provide to the Revenue Commissioners the information specified in paragraph (a) within 28 days of such electronic systems being made available.*

*(5)(a) Upon receipt of payment from the individual concerned in respect of qualifying work, but not later than 10 working days following receipt of such payment, the contractor shall—*

*(i) provide to the Revenue Commissioners the following information:*

*(I) the contractor's name;*

*(II) the contractor's tax registration number and VAT registration number;*

*(III) the unique reference number for the work;*

*(IV) details of the amount of the payment, separately identifying the amount of value-added tax;*

*(V) the name of the individual from whom the payment was received;*

*(VI) the date of the payment,*

*and*

*(ii) provide to the individual a statement showing the amount of the payment separately identifying the amount of value-added tax.*

*(b) Where a qualifying contractor receives payment from the individual in respect of qualifying work to which this section applies on or after 25 October 2013 and before the electronic systems referred to in subsection (10) are made available by the Revenue Commissioners, that contractor shall provide to the Revenue Commissioners the information specified in paragraph (a) within 28 days of such electronic systems being made available.*

*(6) On making a claim under this section, the claimant shall provide to the Revenue Commissioners—*

*(a) the following information:*

*(i) his or her name and tax reference number;*



*(ii) the unique reference number for the work;*

*(iii) the unique identification number assigned in accordance with section 27 of the Finance (Local Property Tax) Act 2012 to the property on which the qualifying work was carried out;*

*(iv) details of any sum referred to in paragraph (a) or (b) of subsection (7);*

*(v) confirmation as to whether or not the property referred to in subparagraph (iii) is a residential premises to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers;*

*(vi) in the case of a property to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, where such property was, as a result of the carrying out of qualifying work, converted into more than one rental unit, the number of such rental units and the address of each rental unit,*

*and*

*(b) a declaration (unless the contrary is the case) in respect of each such payment that—*

*(i) the amount of the payment advised to the Revenue Commissioners by the qualifying contractor under subsection (5)(a)(i)(IV) accords with the amount of the payment made by the claimant to that contractor,*

*(ii) the date of the payment advised to the Revenue Commissioners by the qualifying contractor under subsection (5)(a)(i)(V) is correct,*

*(iii) the work in respect of which payment was made to the qualifying contractor was qualifying work carried out on a qualifying residence of the claimant,*

*(iv) the work in respect of which payment was made to the qualifying contractor has been completed,*

*(v) the contractor has received full payment from the claimant in respect of the work, and*

*(vi) the property on which the qualifying work was carried out was—*

*(1) in the case of a residential premises referred to in paragraph (a), (b) or (e) of the definition of 'qualifying residence' in subsection (1),*

*occupied by the individual as his or her only or main residence on completion of the work, or*

*(II) in the case of a residential premises referred to in paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1), occupied, within 6 months of completion of the qualifying work, by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004 and such registration requirements were complied with, and*

*(III) in the case of each rental unit referred to in paragraph (a) (vi), occupied, within 6 months of completion of the qualifying work, by a tenant under a tenancy for which registration is required under Part 7 of the Residential Tenancies Act 2004 and such registration requirements have been complied with.*

*(7) Where a claimant has received or will receive, in respect of, or by reference to, qualifying work, a sum directly or indirectly—*

*(a) from the State or any public body or local authority, or*

*(b) under any contract of insurance or by way of compensation or otherwise,*

*then, for the purposes of subsection (3)(a), the amount of any payment or payments, as specified in the information provided to the Revenue Commissioners under subsection (5), made in respect of qualifying expenditure on that qualifying work shall be reduced—*

*(i) in the case of paragraph (a), by an amount equal to 3 times the sum received or receivable, and*

*(ii) in the case of paragraph (b), by an amount equal to the sum received or receivable.*

*(8)(a) Relief shall not be given under this section where the requirements of the Finance (Local Property Tax) Act 2012, in relation to the making of returns and the payment of local property tax—*

*(i) have not been complied with in respect of the qualifying residence, or*

*(ii) have not been complied with by a claimant in respect of any relevant residential property (other than the qualifying residence) in relation to which the claimant is a liable person.*

*(b) In this subsection “relevant residential property” and “liable person” have the same meanings respectively as in the Finance (Local Property Tax) Act 2012.*

*(c) Subparagraph (i) of paragraph (a) shall not apply in the case of a residential premises referred to in paragraph (e) of the definition of ‘qualifying residence’ in subsection (1).*

*(9) For the purposes of this section—*

*(a) in the case of a claimant assessed to tax for a year of assessment in accordance with section 1017, any payment in respect of qualifying expenditure to a qualifying contractor made by the claimant’s spouse, in respect of which the claimant’s spouse would have been entitled to relief under this section if that spouse were assessed to tax for the year of assessment in accordance with section 1016 (apart from subsection (2) of that section), shall be deemed to have been made by the claimant, and*

*(b) in the case of a nominated civil partner assessed to tax for a year of assessment in accordance with section 1031C, any payment in respect of qualifying expenditure to a qualifying contractor made by the other civil partner, in respect of which the other civil partner would have been entitled to relief under this section if the other civil partner were assessed to tax for the year of assessment in accordance with section 1031B (apart from subsection (2) of that section), shall be deemed to have been made by the nominated civil partner.*

*(10) Any claim, notification, information or declaration required by this section shall be given by electronic means and through such electronic systems as the Revenue Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 shall apply.*

*(11) Where qualifying expenditure, in relation to qualifying work on a qualifying residence, is incurred by 2 or more claimants, then, except where subsection (9) applies, for the purposes of apportioning the specified amount, each claimant shall be entitled to an amount which bears the same proportion to the specified amount as the qualifying expenditure incurred by that claimant on the qualifying residence bears to the total qualifying expenditure incurred on that residence.*

*(12) In the case of a qualifying residence to which paragraph (a), (b) or (e) of the definition of ‘qualifying residence’ in subsection (1) refers, expenditure in respect of which a claimant is entitled to relief under this section shall not include any expenditure in respect of which that claimant is entitled to a deduction, relief or allowance under any other provision of the Tax Acts or the Value-Added Tax Consolidation Act 2010.*

*(13) Anything required to be done by or under this section by the Revenue Commissioners, other than the making of regulations, may be done by any Revenue officer.*

*(14)(a) The Revenue Commissioners may make regulations for the purposes of this section and those regulations may—*

*(i) specify the manner in which contractors shall provide to the Revenue Commissioners the information required under subsections (4) and (5),*

*(ii) specify the manner in which a claimant shall provide to the Revenue Commissioners the information and declaration required under subsection (6),*

*(iii) specify the manner in which the Revenue Commissioners shall issue notifications under subsection (4)(b)(ii), and*

*(iv) provide for such other matters relating to the information required under subsections (4)(a) and (5)(a) and to the information and declaration required under subsection (6) as are considered necessary and appropriate by the Revenue Commissioners for the purposes of this section and as may be specified in the regulations.*

*(b) Regulations made under this section may contain such incidental, supplemental or consequential provisions as appear to the Revenue Commissioners to be necessary or expedient—*

*(i) to enable persons to fulfil their obligations under this section or under regulations made under this section, or*

*(ii) to give effect to the proper implementation and efficient operation of the provisions of this section or regulations made under this section.*

*(c) Regulations made under this section shall be laid before Dáil Éireann as soon as may be after they are made and, if a resolution annulling those regulations is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.*

## **Submissions**

### *Appellant's Submissions*

9. The Appellant submitted the following in support of his claim:

*“Essentially this appeal refers to Revenue not granting a Home Renovation Incentive Credit which had previously been reflected in the self-assessment acknowledgement date the 9<sup>th</sup> of November 2018.*

*Back In January of 2016, I was advised by the contractor to the effect that his accountants had registered the Home Improvements Grant and that the relevant works number of [REDACTED] but it now seems as if he failed to register any of the five payments which I had given him in a total amount of €46,500.*

*My understanding from talking to my own accountants ([REDACTED]) and, more recently, with a very helpful official in the [REDACTED] is that, if I can now get the contractor to register the relevant payments, Revenue would grant me the appropriate Home Renovation Incentive Credit.*

*I am reasonably hopeful of achieving the foregoing objective but, in the absence of doing so, I can provide Revenue with copy of all five cheque-stubs supported by Bank statements to show that the payments were properly made. In the meantime, Revenue has kindly put a hold on considering any collection of the €3,237 until the end of May.”*

#### Respondent's Submissions

10. The Respondent submits that the HRI is a relief from Income Tax for homeowners, landlords and local authority tenants whereby a taxpayer can claim the HRI Tax Credit for repairs, renovations and improvements to their home or rental property. In order to be eligible for HRI:

- i. The taxpayer must pay under Pay as You Earn or self-assessment;
- ii. The taxpayer's Local Property Tax [hereinafter "LPT"] payments must be up to date (this does not apply to Local Authority tenants);
- iii. The work must be carried out by HRI qualifying contractors.

11. The Respondent further submits that before any work begins a customer should have:

- i. Told the contractor that they would be applying for the HRI Tax Credit;
- ii. Asked the contractor to confirm that they are a qualifying contractor under the scheme;
- iii. Asked the contractor to enter the details of the work through HRI online and checked that it was entered and correct;
- iv. Given the contractor details of their Property ID (LPT).

12. The Respondent submits that it is important for a taxpayer to check that the contractor is a HRI qualifying contractor before work starts and that if the contractor is not a HRI qualifying contractor the taxpayer will not be able to claim the HRI tax credit. The method of checking this information is for a taxpayer to check HRI online and by verifying that the particular work details relating to the taxpayer have been entered. The Respondent submits that this method is the correct way to check whether a contractor is a qualifying contractor. It is the Respondent's position that the Appellant did not ensure that the contractor which he used was a qualified contractor under the HRI scheme.

### **Material Facts**

13. The following material facts are at issue in this Appeal:

- i. The Appellant engaged a qualifying contractor as defined in section 477B(1) of the TCA 1997 to carry out works to his home in 2016 and 2017;
- ii. The Appellant's qualifying contractor complied with its obligations pursuant to section 477B(4) for the provision of certain information to the Respondent before commencing the works;
- iii. A unique reference number was issued by the Respondent to the Appellant for the said works pursuant to section 477B(4)(b)(ii) of the TCA 1997 before the works commenced.

14. The Commissioner has examined the material facts at issue.

**The Appellant engaged a qualifying contractor as defined in section 477B(1) of the TCA1997 to carry out qualifying works to his home in 2016 and 2017:**

15. It is accepted by the Respondent that the Appellant engaged a qualifying contractor as defined in section 477B(1) of the TCA1997 to carry out works to his home in 2016 and 2017.

**The Appellant's qualifying contractor complied with its obligations pursuant to section 477B(4) of the TCA1997 for the provision of certain information to the Respondent before commencing the works:**

16. Section 477B(4)(a) provides that a contractor shall provide the following information to the Respondent before commencing qualifying work:

- (i) the contractor's name,
- (ii) the contractor's tax reference number and VAT registration number,

- (iii) the unique identification number assigned in accordance with section 27 of the Finance (Local Property Tax) Act 2012 to the property on which the qualifying work is to be carried out,
- (iv) the name of the claimant,
- (v) the address of the property at which the work will be carried out,
- (vi) a description of the work to be carried out,
- (vii) the estimated cost of the work to be carried out, separately identifying the amount of value-added tax,
- (viii) the estimated duration of the work, including the estimated start date and estimated end date,
- (ix) confirmation as to whether or not the property referred to in subparagraph (iii) is a residential premises to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, and
- (x) in the case of a property to which paragraph (c) or (d) of the definition of 'qualifying residence' in subsection (1) refers, where such property is, as a result of the carrying out of the qualifying work, to be converted into more than one rental unit, the number of such rental units.

16. In addition, section 477B(4)(b) provides that on receipt of the information referred to in paragraph (a), the Revenue Commissioners shall—

- (i) notify the contractor, as the case may be, that—
  - (I) the contractor is a qualifying contractor for the purposes of this section and such notification shall contain a number for the work (in this section referred to as the "unique reference number"), or
  - (II) that the contractor is not a qualifying contractor for the purposes of this section,

and

- (ii) where the contractor is a qualifying contractor, notify the individual concerned accordingly and the notification shall stipulate the unique reference number for the work.

17. The Respondent does not dispute that the qualifying contractor registered the works pursuant to section 477B(4)(a). Therefore this material fact is accepted.

**Whether a unique reference number was issued by the Respondent to the Appellant for the works pursuant to section 477B(4)(b)(ii) of the TCA1997 before the works commenced:**

18. The issue which arises is whether a “unique reference number” was issued by the Respondent pursuant to section 477B(4)(b) of the TCA1997 prior to the commencement of the works.
19. The Appellant in answer to queries raised by the Commission stated that on 1<sup>st</sup> February 2016 he received an email from a representative of the contractor in answer to his query as to whether approval had been received from the Respondent in respect of works which stated “*We have not received any confirmation from Revenue as yet*”. The Appellant further stated in his answer that “*I may be mistaken but, from the foregoing, it would seem possible that no confirmation or acknowledgement was ever issued by Revenue on this matter*”. The Appellant also stated that he had received an assurance by email dated 1<sup>st</sup> February 2016 from his contractor that “*everything is done*”. It was on the basis of this that the Appellant went forward with the works and with the contractor the subject matter of the within appeal.
20. As with any taxation appeal, the burden of proof rests with the Appellant who must prove on the balance of probabilities that the disputed tax is not payable as set out by Charleton J. in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49. The Appellant has not provided evidence, documentary or otherwise, that pursuant to section 477B(4) of the TCA1997, the Respondent issued a unique reference number for the works prior to their commencement. The Commissioner notes that the Appellant himself in his submissions acknowledges that it is possible the Respondent did not issue a confirmation or acknowledgement in this regard.
21. The Commissioner finds on the balance of probabilities that a unique reference number was not issued by the Respondent for the works the subject matter of the within appeal pursuant to section 477B(4)(b) of the TCA 1997. Therefore this material element is not accepted.
22. Therefore the following are the material facts which the Commissioner has accepted:
  - i. The Appellant engaged a qualifying contractor as defined in section 477B(1) of the TCA1997 to carry out works to his home in 2016 and 2017;
  - ii. The Appellant’s qualifying contractor complied with its obligations for the provision of certain information to the Respondent before commencing the works.



## **Analysis**

23. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

24. The Commissioner has accepted that in relation to the works to his home, the Appellant:

- i. The Appellant engaged a qualifying contractor; and
- ii. The qualifying contractor complied with its obligations for the provision of information to the Respondent before commencing the works.

25. What is at issue is whether a unique reference number pursuant to section 477B(4) of the TCA 1997 was issued by the Respondent prior to the works commencing as required under the TCA 1997. The Commissioner has already found that unique reference number was not issued prior to the works commencing.

26. As a result of the Appellant being unable to provide the Commissioner with a unique reference number it follows that full compliance with section 477B(4) was not achieved prior to the commencement of the works or indeed at any time. This is an unfortunate situation as the Appellant relied completely on his contractor and the information provided by him which was incorrect and erroneous. The position is that the Appellant did not satisfy himself that the Respondent had approved the works prior to them commencing which is a fundamental requirement of the HRI scheme and that the works commenced and concluded without a unique identifier number from the Respondent.

27. The Commissioner is not satisfied that the Appellant has discharged the burden of proof in this appeal and the Commissioner finds that the Appellant has not shown that the disputed tax is not payable.

## **Determination**

28. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the relevant tax was not payable.

29. It is understandable that the Appellant might be disappointed with the outcome of his appeal. The Appellant has found himself in an unfortunate situation. The Appellant was correct to check to see whether his legal rights were correctly applied.

30. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949U thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Clare O'Driscoll  
Appeal Commissioner  
8<sup>th</sup> February 2022