



157TACD2023

Between:

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**DETERMINATION**

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## **Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against the decision of the Revenue Commissioners (hereinafter the “Respondent”) dated 28 March 2023 to clawback 20% of the Help to Buy relief which the Appellant had previously been approved for and received pursuant to section 477C of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).
2. The oral hearing of this appeal took place remotely on 26 September 2023.
3. The total amount of tax under appeal is €3,842.40.

## **Background**

4. [REDACTED] (hereinafter the “Appellant”) is a former Pay As You Earn taxpayer who from 2018 was jointly assessed to tax with her husband, [REDACTED].
5. On 1 December 2017, the Appellant and her husband, as first time property purchasers, initiated an application to the Respondent for Help to Buy relief pursuant to the provisions of section 477C of the TCA1997 (hereinafter the “Application”) in relation to the property at [REDACTED] (hereinafter the “Property”).
6. Various delays in completing the Application occurred and the Application was finally completed by the Appellant and her husband on 18 December 2017. The claim for Help to Buy Relief comprised of a repayment of the Appellant’s tax only
7. On 18 December 2017 the property developer building the Property verified the claim and a payment for the maximum amount available of €19,212 subsequently issued from the Respondent to the property developer.
8. On 5 January 2018 the Appellant and her husband instructed their mortgage provider to draw down the mortgage relating to the Property.
9. On 31 January 2018 the Stamp Duty Return form ST21 for the purchase of the Property by the Appellant and her husband was filed with the Respondent which recorded the purchase and transfer of the Property by the Appellant and her husband as occurring on 10 January 2018. The Appellant and her husband took up residence in the Property in January 2018.
10. Prior to submitting the application for Help to Buy relief on 1 December 2017, the Appellant had made a number of attempts to apply for Help to Buy relief. Due to various administrative requirements, these applications were not accepted by the Respondent

and the only valid application for Help to Buy relief submitted by the Appellant was that of 1 December 2017.

11. Due to unfortunate family circumstances [REDACTED], the Appellant and her husband made a decision in September 2022 to return to their home country of [REDACTED].
12. The Appellant ceased her employment in Ireland on [REDACTED] 2022 and her husband ceased his employment in Ireland on [REDACTED] 2022.
13. A Stamp Duty return ST21 form relating to the sale of the Property by the Appellant and her husband was filed with the Respondent on [REDACTED] December 2022 which recorded the sale and transfer of the Property on [REDACTED] December 2022.
14. On [REDACTED] December 2022 the Appellant and her husband made claims for unemployment repayments which recorded that they had left Ireland permanently on [REDACTED] December 2022.
15. The Respondent commenced a compliance review of the Appellant's Help to Buy claim on 16 January 2023.
16. On completion of the compliance review, following correspondence between the Appellant and the Respondent (hereinafter the "Parties"), the Respondent informed the Appellant that it had determined that, as the Appellant had occupied the Property for a period of less than five years, the provisions of section 477C(17)(b)(ii)(V) of the TCA1997 required that the Appellant should repay an amount equal to 20% of the Help to Buy relief received in relation to the Property. The repayment amount identified by the Respondent was €3,842.40. This was communicated to the Appellant by letter from the Respondent dated 28 March 2023.
17. By way of Notice of Appeal dated 6 April 2023 the Appellant appealed the decision of the Respondent.

### **Legislation and Guidelines**

18. The legislation relevant to this appeal is as set out below.

#### Section 477C of the TCA1997 – Help to Buy

*“(1) In this section—*

*...*

*“first-time purchaser” means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person,*

*previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;*

...

*“qualifying contractor” has the meaning assigned to it by subsection (2);*

...

*“qualifying period” means the period commencing on 19 July 2016 and ending on 31 December 2019;*

*“qualifying residence” means –*

*(a) a new building which was not, at any time, used, or suitable for use as a dwelling, or*

*(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,*

*and-*

*(i) which is occupied as the sole or main residence of a first time purchaser,*

*(ii) in respect of which the construction work is subject to the rate of tax specified in section 46(1)© of the Value Added Tax Consolidation Act 2010, and*

*(iii) where the purchase value is not greater than –*

*(I) where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection 3(a) is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in subsection (3) (b) is drawn down by a claimant, €600,000 or*

*(II) in all other cases €500,000.*

...

*(3) Where an individual has, in the qualifying period, either—*

*(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or*

*(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,*

*that individual may make a claim for an appropriate payment.*

...

*(17) (a) On its completion, a qualifying residence or a self-build qualifying residence shall be occupied by the claimant as his or her only or main residence.*

*(b)(i) Where an appropriate payment is made on foot of a claim under this section, and the qualifying residence or self-build qualifying residence ceases to be occupied—*

*(I) by the claimant, or*

*(II) where more than one individual is a party to the claim, by all of those individuals,*

*within 5 years from occupation of the residence, the claimant shall notify the Revenue Commissioners and, in accordance with subparagraph (ii), pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or the lesser percentage there specified of the amount of the appropriate payment.*

*(ii) Where the residence ceases to be occupied as mentioned in subparagraph (i)—*

...

*(V) within the fifth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 20 per cent of the amount of the appropriate payment.*

...

*(21) An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days of the notice of that decision."*

**Submissions**

Appellant's Submissions

19. The Appellant submitted the following in her Notice of Appeal to the Commission:

*“To whom it may concern,*

*I am writing to you in relation to the Revenue Commissioner's decision to claw back 20% of the HTB incentive granted to my husband and me when we bought our house in January 2018. Please find attached my correspondence with Revenue, which I initiated on 10 November 2022, while we were still in the process of selling our property and we were unsure of the date when the deal would be closed (please find attached document Enquiry\_10112022.pdf). Please note that I did not receive any response as to whether we were liable to pay any penalty and my query was marked as Completed by Revenue without any response.*

*I was contacted by Revenue on 24 January 2023, with a request to provide details of when my family and I started residing in the property and when we sold our house. I provided all necessary documents (Please find attached documents Enquiry\_24012023.pdf, Enquiry\_07022023.pdf, Enquiry\_28022023.pdf, Enquiry\_16032023.pdf) At the end Revenue issued Revenue's Notice of Assessment for where they request for a repayment to be made to Revenue in the amount of €3,842.40 or 20% of the Help-to-Buy payment we received (please find attached [REDACTED] ---28-03-23.pdf and NOA--[REDACTED] ---28-03-23.pdf).*

*As previously stated to Revenue Commissioners, [REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]*

*[REDACTED]  
my husband and I made the difficult decision to sell our house and relocate to [REDACTED],  
our home country in the hope that the drier climate would help [REDACTED].*

*We bought the house in January 2018 and moved into the property as soon as we drew out the mortgage from the bank. Please find attached a copy of the Mortgage Loan letter from [REDACTED] from [REDACTED] January 2018, confirming that the funds have been drawn from our loan account (Mortgage Loan.pdf).*

*We sold our house on 6 December 2022, which resulted in us residing for 59 months in the property we bought with HTB assistance, which does not meet the requirements of us residing in the property for 60 months (5-year rules of residence for HTB).*

*I understand that the law requires us to reside in the property for 60 months rather than just 59 months, however I was hoping to reduce the amount we owe Revenue as we sold the property [REDACTED] and pay back a portion of the 20% HTB clawback considering that we resided in the property for 11 months out of the 12 in year 5 after purchasing the property.*

*I hope the supporting documentation I attached will be sufficient for reaching a mutual agreement on the amount we are liable to pay.*

*Please let me know if there is anything else I could provide to support my appeal.*

*Kind Regards,*

[REDACTED]

20. The Appellant submitted the following in her Statement of Case:

*"Dear Tax Appeal Commission,*

*I am writing to you in relation to the Revenue Commissioner's decision to claw back 20% of the HTB incentive granted to my husband and me when we bought our house in January 2018. Please find attached my correspondence with Revenue, which I initiated on 10 November 2022, while we were still in the process of selling our property and we were unsure of the date when the deal would be closed (please find attached document Enquiry\_10112022.pdf). Please note that I did not receive any response as to whether we were liable to pay any penalty and my query was marked as Completed by Revenue without any response.*

*I was contacted by Revenue on 24 January 2023, with a request to provide details of when my family and I started residing in the property and when we sold our house. I provided all necessary documents (Please find attached documents Enquiry\_24012023.pdf, Enquiry\_07022023.pdf, Enquiry\_28022023.pdf,*



*Enquiry\_16032023.pdf) At the end Revenue issued Revenue's Notice of Assessment for where they request for a repayment to be made to Revenue in the amount of €3,842.40 or 20% of the Help-to-Buy payment we received (please find attached [REDACTED]---28-03-23.pdf and NOA-[REDACTED]---28-03-23.pdf). I would like to appeal their decision in the attached Notice of Appeal\_06042023.pdf.*

*As previously stated to Revenue Commissioners, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]*

*[REDACTED]  
my husband and I made the difficult decision to sell our house and relocate to [REDACTED], our home country in the hope that the drier climate would help [REDACTED].*

*We bought the house in January 2018 and moved into the property as soon as we drew out the mortgage from the bank. Please find attached a copy of the Mortgage Loan letter from [REDACTED] from 5 January 2018, confirming that the funds have been drawn from our loan account (Mortgage Loan.pdf).*

*We sold our house on 6 December 2022, which resulted in us residing for 59 months in the property we bought with HTB assistance, which does not meet the requirements of us residing in the property for 60 months (5-year rules of residence for HTB).*

*I understand that the law requires us to reside in the property for 60 months rather than just 59 months, however I was hoping to reduce the amount we owe Revenue as we sold the property [REDACTED] and pay back a portion of the 20% HTB clawback considering that we resided in the property for 11 months out of the 12 in year 5 after purchasing the property.*

*I hope the supporting documentation I attach in this appeal will be sufficient for reducing the repayment we need to make.*

*Please let me know if there is anything else I could provide to support my appeal.*

*Kind Regards,*

██████████”

21. At the oral hearing of this appeal, the Appellant outlined to the Commissioner that she understands that she was required to reside in the Property for a period of five years in order to avoid the Respondent clawing back some of the Help to Buy relief which she received in relation to the Property.
22. She stated that, at the time of purchasing the Property, there was a lot of confusion in relation to the application process and that there were a lot of administrative requirements which needed to be completed before the claim for the Help to Buy relief could be submitted to the Respondent.
23. She stated that, at the time of purchasing the Property, it was never her intention to sell it. The only reason that she and her husband decided to sell the Property was because ██████████ and their decision to return to ██████████.
24. She stated that she hoped that there could be some understanding that because of ██████████ and because of the fact that the Property was sold one month short of the five year period, there would be some way of reducing the amount which she would be required to repay to the Respondent under the provisions of section 477C of the TCA1997.

#### Respondent's Submissions

25. The Respondent submitted that they are satisfied that the Appellant and the Property qualified in all respects for Help to Buy relief pursuant to section 477C of the TCA1997 and that she correctly received Help to Buy relief in the amount of €19,212.00 in relation to the purchase of the Property.
26. The Respondent submitted that the provisions of section 477C(17)(a) require that a claimant for Help to Buy relief must occupy a residence for which Help to Buy relief is received for a period of five years.
27. The Respondent further submitted that the provisions of section 477C(17)(b) require that, if a person ceases to occupy a residence for which Help to Buy relief is received for a period of five years, then a repayment of a percentage of the amount of Help to Buy Relief is required. In the Appellant's circumstances, it was submitted that as she ceased to



- viii. Due to unfortunate family circumstances [REDACTED], the Appellant and her husband made a decision in September 2022 to return to their home country of [REDACTED];
- ix. The Appellant ceased her employment in Ireland on [REDACTED] October 2022 and her husband ceased his employment in Ireland on [REDACTED] November 2022;
- x. A Stamp Duty return ST21 form relating to the sale of the Property by the Appellant and her husband was filed with the Respondent on [REDACTED] December 2022 which recorded the sale and transfer of the Property on [REDACTED] December 2022;
- xi. On [REDACTED] December 2022 the Appellant and her husband made claims for unemployment repayments which recorded that they had left Ireland permanently on [REDACTED] December 2022;
- xii. The Respondent commenced a compliance review of the Appellant's Help to Buy claim on 16 January 2023;
- xiii. On completion of the compliance review, following correspondence between the Parties, the Respondent informed the Appellant that it had determined that, as the Appellant had occupied the Property for a period of less than five years, the provisions of section 477C(17)(b)(ii)(V) of the TCA1997 required that the Appellant should repay an amount equal to 20% of the Help to Buy relief received in relation to the Property. The repayment amount identified by the Respondent was €3,842.40. This was communicated to the Appellant by letter from the Respondent dated 28 March 2023;
- xiv. By way of Notice of Appeal dated 6 April 2023 the Appellant appealed the decision of the Respondent.

### **Analysis**

29. 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, is 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.”*

30. There is no dispute between the Parties that the Appellant correctly received an appropriate payment under the provisions of section 477C of the TCA1997 in relation to the Property.

31. There is also no dispute between the Parties that the Appellant and her husband both remained in occupation of the Property as their main residence for a period of 4 years and 11 months.

32. There is further no dispute between the Parties that the Appellant and her husband sold the Property in December 2022 and that they left Ireland and relocated to their home country of ██████ in December 2022.

33. Section 477C(17)(a) of the TCA1997 provides that:

*“On its completion, a qualifying residence or a self-build qualifying residence shall be occupied by the claimant as his or her only or main residence.”*

34. Section 477C(17)(b)(i) of the TCA1997 provides that:

*“Where an appropriate payment is made on foot of a claim under this section, and the qualifying residence or self-build qualifying residence ceases to be occupied—*

*(i) by the claimant, or*

*(ii) where more than one individual is a party to the claim, by all of those individuals,*

*within 5 years from occupation of the residence, the claimant shall notify the Revenue Commissioners and, in accordance with subparagraph (ii), pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or the lesser percentage there specified of the amount of the appropriate payment.*

*(ii) Where the residence ceases to be occupied as mentioned in subparagraph (i)—*

*...*

*(V) within the fifth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 20 per cent of the amount of the appropriate payment.”*

35. Section 477C(17)(b)(i) of the TCA 1997 provides that, in circumstances where the Appellant and her husband ceased to reside in the Property within the fifth year from

occupation, she “*shall*” notify the Respondent and pay the Respondent an amount as specified in section 477C(17)(b)(ii)(V) of the TCA1997, that amount being 20%.

36. The use of the word “*shall*” as set out in section 477C(17)(b)(i) of the TCA1997, 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 amount of repayment as specified in section 477C(17)(b)(ii)(V) of the TCA1997 may be reduced.

37. The Commissioner has no authority or discretion to direct that the amount of repayment as specified in section 477C(17)(b)(ii)(V) of the TCA1997 may be reduced.

38. Therefore, it follows that the Appellant must repay the amount of €3,842.40 to the Respondent that being 20% of the €19,212.00 in Help to Buy relief which was paid by the Respondent in relation to the Property.

### **Determination**

39. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner determines that the Appellant has not succeeded in establishing that the Respondent was incorrect in determining that the provisions of section 477C(17)(b)(ii)(V) of the TCA1997 required that the Appellant should repay an amount equal to 20% of the Help to Buy relief received in relation to the Property.

40. The Commissioner determines that the Appellant should repay the amount of €3,842.40 to the Respondent, that being 20% of the €19,212.00 in Help to Buy relief which was paid by the Respondent in relation to the Property.

41. It is understandable that the Appellant will be disappointed with the outcome of her appeal. The Appellant was correct to check to see whether her legal rights were correctly applied.

42. The Commissioner appreciates and acknowledges the helpful and courteous manner in which both the Appellant and Respondent conducted this appeal.

43. This Appeal is determined in accordance with Part 40A of the TCA1997 in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA1997.

### **Notification**

44. This determination complies with the notification requirements set out in section 949AJ of the TCA1997, in particular section 949AJ(5) of the TCA1997 and section 949AJ(6) of the TCA1997. For the avoidance of doubt, the Parties are hereby notified of the determination

under section 949AJ of the TCA1997 and in particular the matters as required in section 949AJ(6) of the TCA1997. This notification under section 949AJ of the TCA1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The Parties shall not receive any other notification of this determination by any other methods of communication.

### **Appeal**

45. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Clare O'Driscoll  
Appeal Commissioner  
29 September 2023