



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against the refusal of the Revenue Commissioners (hereinafter "the Respondent") of a claim for the repayment of stamp duty pursuant to section 159A of the Stamp Duty Consolidation Act 1999 (hereinafter the "SDCA1999") made by the Appellant in respect of the tax year 2017.
2. The oral hearing of this appeal was heard remotely by the Commissioner on 14 November 2022.
3. The amount of tax at issue is €8,000.00.

Background

4. Mr ██████████ (hereinafter the "Appellant") is a businessman and property owner who was the 100% shareholder of ██████████ Ltd (hereinafter the "Company") to whom the property at ██████████

████████ contained in Folio ██████████ (hereinafter the "Premises") was conveyed by Deed of Distribution in Specie executed on 21 September 2017.

5. The Circumstances of the Deed of Transfer arose on foot of an Emergency General Meeting of the Company which was held on 5 November 2015 at which a Special Resolution was passed resolving that the Company be voluntarily wound up and that a Liquidator be appointed. A Special Resolution was also passed resolving that the Liquidator was authorised to distribute the assets or any part of the assets of the Company.
6. The liquidation of the Company took place and, all liabilities of the Company having been duly paid and discharged, the Liquidator agreed with the Appellant to transfer the Premises to the Appellant and the Deed of Distribution in Specie was executed on 21 September 2017.
7. On 27 October 2017 the solicitors acting for the Appellant filed a Self-Assessed Stamp Duty Return (hereinafter the "Return") to the Respondent which described the Deed of Distribution in Specie as a *"Conveyance or Transfer of any other kind not already described in 1 Schedule SOGA 1999"*. The amount of the Stamp Duty liability which arose on foot of the Return was €8,000.00 which was duly paid by the Appellant. On foot of the foregoing a Stamp Certificate Doc ID ██████████ was issued by the Respondent in respect of the Deed of Distribution in Specie on 27 October 2017, that is to say the instrument was stamped by the Respondent on 27 October 2017.
8. On 8 January 2019 the Respondent amended Stamp Certificate Doc ID ██████████ to reflect the Folio Number ██████████ on foot of an application by the Appellant's solicitors.
9. On 12 July 2022 the Appellant's solicitors submitted a claim for repayment of the Stamp Duty €8,000.00 paid on the basis that at the time of the Return on 27 October 2017 they had understood that the transaction was liable to Stamp Duty but they had recently discovered that this was incorrect and they has subsequently come to realise that Stamp Duty is not payable on Distributions in Specie.
10. On 20 July 2022 the Respondent wrote to the Appellant's solicitors refusing the application for a repayment on the basis that the claim for repayment had not been made within 4 years of the date of stamping of the Deed of Distribution in Specie.
11. On 28 July 2022 the Appellant submitted a Notice of Appeal to the Commission.

Legislation and Guidelines

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

Section 159A(1) of the SDCA1999 – Time limits for claiming a repayment of stamp duty:

“(1)Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the operator-instruction referred to in section 69 was made or the date the person achieves the standard within the meaning of section 81AA(11)(a).”

Section 159B(4) of the SDCA1999

“(4)A claim for repayment under this section shall only be treated as a valid claim when—

(a)it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made,

and

(b)all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.”

Submissions

Appellant’s Submissions

13. The Appellant submitted that it had been discovered in July 2022 the Return was erroneously filed in respect of the Deed of Distribution in Specie. The Appellant submitted that section 618 of the Companies Act 2014 provides that stamp duty is not chargeable on an instrument which transfers assets by way of a Distribution in Specie

14. The Appellant submitted that the time limit of 4 years from the date of stamping of an instrument for the repayment of Stamp Duty as contained in section 159A of the SDCA199 should not be strictly applied in circumstances where the Deed of Distribution in Specie was not liable for Stamp Duty and whereby the Respondent would not incur a loss as a result of any repayment.

Respondent’s Submissions

15. The Respondent submitted that the provisions of section 159A(1) of the SCA1999 mean that there is no discretion available in relation to the application of the 4 year rule for claiming the repayment of Stamp Duty and on that basis their hands are tied and they cannot issue a repayment to the Appellant.

Material Facts

16. The following material fact is not at issue in this appeal and the Commissioner accepts same as a material fact:

- (a) On 12 July 2022 the Appellant's solicitors submitted a claim for repayment to the Respondent of the Stamp Duty of €8,000.00 in relation to the Stamp Certificate dated 27 October 2015.

Analysis

17. As with all appeals before the Commission 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."

18. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in this appeal.

19. Section 159B(4) of the SDCA1999 provides that a claim for repayment shall only be treated as a valid claim when—

- (a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made,

and

- (b) all information which the Respondent may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

20. A repayment of tax was sought by the Appellant on the basis that the Stamp Duty tax paid on 27 October 2017 was not due. Section 159A(1) of the SDCA1999 means the repayment of tax sought is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of Stamp Duty in the amount of €8,000.00 in relation to the Stamp Certificate dated 27 October 2017, the Respondent must have received a valid claim.

21. The Respondent had all the information which they required to enable them to determine if and to what extent a repayment of tax was due on 12 July 2022 following the delivery of

the relevant claim to repayment by the Appellant. This was in excess of 4 years from the date on which the instrument was stamped by the Respondent.

22. Having established that there is a valid claim, the provisions of section 159A(1) of the SDCA1999 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 159A(1) of the SDCA1999, no valid claim for repayment of tax had been submitted by the Appellant.
23. The use of the word “*shall*” as set out in section 159A(1) of the SDCA1999, 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 4 year rule might be mitigated.
24. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 159A(1) of the SDCA1999.
25. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of a 4 year statutory limitation period. These determinations, may be found on the Commission website.¹
26. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund was payable by the Respondent.

Determination

27. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant refund was payable.
28. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant’s position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.
29. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”) and in particular, section 949 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 TCA1997.

¹ www.taxappeals.ie



Clare O'Driscoll
Appeal Commissioner
23 November 2022