



53TACD2023

Between

████████████████████

**Appellants**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████  
██████████ (“the Appellants”) pursuant to section 159A(1A) of the Stamp Duties Consolidation Act 1999 as amended (“SDCA 1999”) against the refusal of the Revenue Commissioners (“the Respondent”) to refund €1,450 of stamp duty paid by the Appellants, on the ground that the repayment was sought outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) this appeal is determined without a hearing.

**Background**

3. On 22 July 2022, the Appellants appealed to the Commission against the refusal of the Respondent to refund €1,450 of stamp duty paid by them on the purchase of ██████████  
████████████████████ (“the property”).
4. On 3 October 2022, the parties were advised that the appeal was considered appropriate to be adjudicated without a hearing, and that if they had any objection to the appeal

proceeding to determination without a hearing, they should notify the Commission within 21 days. No objection was received from either the Appellants or the Respondent. In the circumstances, the Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing, pursuant to section 949U of the TCA 1997.

## **Legislation**

5. Section 159A(1) of the SDCA 1999 states that

*“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).”*

## **Submissions**

### *Appellants*

6. The Appellants submitted that:

*“We purchased an Apartment in summer of 2016. It is [the property].*

*We had previously purchased [REDACTED] in 2003. Both Apartments were leased to [REDACTED]. They are liable for Commercial Rates, and not for LPT. Thus they do not have a LPT number. [REDACTED] was under a lease and if it was sold a VAT charge would arise on the unexpired portion of the lease.*

*We intended to sell [REDACTED] close to the end of the lease term, thus minimising the VAT charge. Covid delayed this substantially.*

*I enclose an extract from our discussions with [the Respondent] regarding the sale of [REDACTED]. Prior to this we had to submit and pay the Vat due as explained above.*

*It became clear that we had overpaid the stamp duty on the purchase of [the property].*

*Our Solicitor in good faith had, with our agreement paid 2% (commercial rate) rather than the 1% (Residential rate) in 2016.*

*During the process of preparing to sell [REDACTED], it became clear that a LPT ID number would be required from [the Respondent], we thus entered into discussion with [the Respondent] to obtain this.*

*On completion of the sale of [REDACTED], our solicitor made the application for the refund of the excess stamp duty paid in July 2021.*

*We were refused on the basis that we were outside the 4 year rule for refunds. This I contend is a terrible interpretation of this rule, Covid delayed everything.*

*Revenue were swamped, some of the delay was attributed to this, we did everything we were required to do, and to be now penalised for being compliant and we made the appeal as soon as we had obtained all the information including the LPT ID number from [the Respondent] and the VAT was repaid to [the Respondent] on the lease, as set out above.*

*I look forward to a fair decision.”*

*Respondent*

7. The Respondent submitted that:

*“[The Appellants] purchased the property ... on 27/06/2016.*

*The stamp duty return under [REDACTED] was filed on a self-assessment basis by their Solicitor ... on 28/06/2016.*

*The type of property was entered as non-residential which attracts stamp duty at 2%. Stamp duty paid: €2,900 (€145,000 X 2%).*

*[The Respondent] received an email from [the Appellants' solicitor] on 16/6/2021 stating that their clients had received an LPT number for the property and wished to file an amended return to change type of property as residential & therefore be liable to duty 1%.*

*[The Respondent] replied with details of how to amend the return and pointed out that if the return was amended that any claim for refund of stamp duty will be outside the 4 year time limit allowed under Section 159A SDCA, 1999.*

*The return was amended on 21/07/2021 by [the Appellants' solicitor] which resulted in the stamp duty liability being reduced from €2,900 to €1,450.*

*[The Appellants' solicitor] wrote to us on 03/09/2021 requesting a reply to his letter dated 23 July 2021. As we did not appear to have received that letter an email issued to him requesting a copy of same. It was never forwarded to this office.*

*On a review of refund work items, [the Respondent] reviewed this case and wrote to [the Appellants] stating that the refund of €1,450 was disallowed as the claim for refund was made over 5 years from the filing date and is outside the 4 year time limit allowed under Section 159A SDCA 1999.*

*Notice of appeal submitted by the [Appellant] on 22/07/2022.*

*The [Appellant] disputes this decision on the basis that Covid delayed everything, and [the Respondent was] "swamped" and some of the delay was attributed to this as they were awaiting an LPT number from [the Respondent].*

*[The Appellants] applied to [the Respondent] for an LPT property ID in respect of this property on 20/05/2021 and received it on 11/06/2021- there was no delay in receiving it. The 4 year limit for stamp duty had already lapsed when the application was made.*

*They are also referring to a second property [REDACTED] which they were in the process of selling. This does not relate in any way to the property in which they are claiming the refund for other than both properties were leased to [REDACTED]. They also sought an LPT number from [the Respondent] for this property in March 2021 and received it in April."*

## **Material Facts**

8. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:

8.1 The Appellants purchased the property on 27 June 2016. On 28 June 2016, the Appellants' solicitor, on their behalf, assessed the property as non-residential for the purposes of stamp duty. As a result, the Appellants paid 2% stamp duty on the property i.e. €2,900.

8.2 The Appellants' request for a refund of excess stamp duty was made on 21 July 2021.

## Analysis

9. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: *“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.”*
10. Section 159A(1) of the SDCA 1999 provides that a request for a refund of stamp duty paid by a taxpayer must be made within four years of, *inter alia*, *“the date the statement of liability was delivered”* to the Respondent.
11. In this instance, the Appellants’ solicitor filed a stamp duty return on their behalf on 28 June 2016, which provided that the property was non-residential. Consequently, the Appellants paid stamp duty at 2%, being an amount of €2,900.
12. The Appellants subsequently considered that the property should have been classified as residential, with a consequent reduced liability to stamp duty. Their solicitor filed an amended return on 21 July 2021, and sought a refund of €1,450.
13. On 29 June 2022, the Respondent wrote to the Appellants and stated *inter alia* that  

*“Return under Document I.D. ██████████ was filed on 28 June 2016 in respect of deed executed on 27 June 2016. Return was filed on self-assessment basis as non-residential (2<sup>nd</sup> hand commercial property). Return was amended by solicitor on 21 July 2021 to change type of property to residential. Claim for refund of Stamp Duty must be made within 4 years of date of filing. As claim for refund was made over 5 years after filing date it is outside the 4 year time limit allowed under Section 159A SDCA 1999, your claim for refund of Stamp Duty totalling €1450.00 has been disallowed.”*
14. It has not been denied by the Appellants that their request for a refund was made later than four years after the filing of their stamp duty return. In their submissions to the Commission they stated that the Respondent’s refusal of their request *“is a terrible interpretation of this rule, Covid delayed everything.”*
15. The Commissioner is satisfied that the requirement under section 159A(1) of the SDCA 1999 that a claim for refund of stamp duty be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. In this instance, the relevant timeframe is four years from filing of the

return. Therefore, as the return was filed on 28 June 2016, the Appellants were obliged to make any claim for a refund by 28 June 2020.

16. The Appellants' amended return was filed on 21 July 2021. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claim for a refund, as section 159A(1) does not allow the Respondent, or the Commission on appeal, to take into account any mitigating circumstances for the failure to comply with the mandated timeframe. The Commissioner appreciates that this is frustrating and disappointing for the Appellants, who were entitled to exercise their right to an appeal to the Commission of the Respondent's refusal of their claim.

### **Determination**

17. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellants' application for a refund of stamp duty in the amount of €1450.

18. The appeal is hereby determined in accordance with section 949U of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone  
Appeal Commissioner  
14 February 2023