



77TACD2023

Between

■■■■■

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ■■■■■ (“the Appellant”) pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to grant her mortgage interest tax relief at source (“TRS”) in respect of (i) 50% of the total mortgage amount, on the ground that this portion of the mortgage was taken out by the Appellant for the purpose of providing a loan to her daughter’s partner, and (ii) for years prior to 2018, on the ground that the repayment was sought outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 24 February 2022, the Appellant appealed the refusal of the Respondent to grant TRS on 50% of her mortgage (i.e. €65,000) and for the years prior to 2018. The parties confirmed that they had no objection to the appeal being determined without a hearing.

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 and Guidelines

4. Section 244(1) of the TCA 1997 provides *inter alia* that

“‘dependent relative’, in relation to an individual, means any of the persons mentioned in paragraph (a) or (b) of subsection (2), or in paragraph (a) or (b) of subsection (2A), of section 466 in respect of whom the individual is entitled to a tax credit under that section.

‘qualifying loan’, in relation to an individual, means a loan or loans which, without having been used for any other purpose, is or are used by the individual solely for the purpose of defraying money employed in the purchase, repair, development or improvement of a qualifying residence or in paying off another loan or loans used for such purpose.

‘qualifying residence’ in relation to an individual, means a residential premises situated in an EEA state or in the United Kingdom which is used as the sole or main residence of –

- (i) the individual,*
- (ii) a former or separated spouse of the individual, or a former civil partner or a civil partner from whom the individual is living separately in circumstances where reconciliation is unlikely, or*
- (iii) a person who in relation to the individual is a dependent relative, and which is, where the residential premises is provided by the individual, provided rent-free and without any other consideration.”*

5. Section 466 of the TCA 1997 provides *inter alia* that

“(2) Where for any year of assessment a claimant proves that he or she maintains at his or her own expense any person, being—

- (a) a relative of the claimant, or of the claimant’s spouse, incapacitated by old age or infirmity from maintaining himself or herself,*
- (b) the widowed father or widowed mother of the claimant or of the claimant’s spouse, whether incapacitated or not, or*
- (c) a child of the claimant who resides with the claimant and on whose services the claimant, by reason of old age or infirmity, is compelled to depend...*

(2A) A tax credit under this section may also be claimed by a claimant where all other conditions of this section have been met but the person being maintained is—

- (a) a relative of the claimant's civil partner,*
- (b) the widowed father or widowed mother of the claimant's civil partner or a parent of the claimant's civil partner who is a surviving civil partner, or*
- (c) a child of the civil partner of the claimant who resides with the claimant and on whose services the claimant, by reason of old age or infirmity, is compelled to depend."*

6. Section 865 of the TCA 1997 provides *inter alia* that

"(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

[...]

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made –

*(i) under subsection (2) and not under any other provision of the Acts,
or*

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates."

Submissions

Appellant

7. The Appellant submitted that

“In 2006 I gave my daughter’s partner €65,000 to buy a property in [REDACTED] This money was a loan and I have not been repaid other than approx. €8,000...This was a silly thing to do but I was just looking after my daughter and my grandchildren...Half of my pension goes on my mortgage and I am now in arrears so I really need to get this sorted.

[...]

I also sent a tax form in and heard nothing and I spoke to [the Respondent] and he did a form over the phone and he says the 65,000 I gave to my daughter’s partner was a gift but it was a loan and I emphasised this to him. I have never got a penny from my daughter or her partner since 2009. I have been trying to pay back the money...”

Respondent

8. The Respondent submitted that

“In February 2022, the Appellant applied for TRS relief. TRS relief for [the Appellant] was restricted as a result of the following:

1) 50% of the mortgage does not qualify for TRS, as by Appellant’s own admission to [the Respondent], it was given by Appellant as a loan of €65,000 to her daughter to purchase an overseas property. Therefore only 50% of the loan is considered to qualify for TRS.

2) Appellant applied for TRS relief in 2022, some 16 years after her mortgage was drawn down, and is seeking relief for all years 2006 to date. Section 865(4) of the Taxes Consolidation Act, 1997 (as amended by Finance Act 2003), outlines the time limits for taxpayers to make a claim for repayment of tax (claims for repayment of tax in relation to any chargeable period beginning on or after 1 January 2003 must be made within 4 years after the end of the chargeable period to which the claim relates).

[...]

Based on the legislation [the Appellant] received tax relief on the qualifying portion of her loan for years 2018, 2019, and 2020. [The Appellant] has already been issued with refunds for these years.”

Material Facts

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

9.1. The Appellant drew down a mortgage in 2006. 50% of the mortgage (i.e. €65,000) was drawn down for the purpose of providing a loan to the Appellant's daughter's partner to purchase a property in [REDACTED]

9.2. The Appellant applied for TRS in February 2022.

Analysis

10. 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."*

11. Section 244 of the TCA 1997 provides for TRS in respect of certain qualifying loans and qualifying residences. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. However, section 865(4) states *inter alia* that "a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made... within 4 years, after the end of the chargeable period to which the claim relates." (emphasis added)

12. The Appellant is aggrieved that (i) the Respondent only granted TRS on 50% of her mortgage, and (ii) it did not grant relief for mortgage payments made by her prior to 2018.

13. In respect of (i), the Commissioner notes the Appellant's evidence that 50% of her mortgage, which she took out in 2006, was for the purpose of providing a loan to her daughter's partner for the purpose of his purchase of a property in [REDACTED]. The Commissioner is satisfied that the Respondent was correct in concluding that this percentage of the loan was not a qualifying loan for the purposes of section 244 of the TCA 1997. A "qualifying loan" is one that is solely for the purpose of *inter alia* the purchase of a "qualifying residence". A "qualifying residence" must be a residence in the European Economic Area or the United Kingdom. Therefore, a property in [REDACTED] cannot be a qualifying residence. Furthermore, the residence must be for the use of the individual, their former spouse/civil partner or a dependent relative. The Appellant provided the loan to her daughter's partner, and there was no evidence provided to suggest that her daughter's partner came within the definition of "dependent relative" as set out in section 466 of the

TCA 1997. Therefore, the Commissioner finds that 50% of the Appellant's mortgage did not qualify for TRS.

14. In respect of (ii), the Respondent stated that the Appellant claimed TRS in 2022 and was granted tax relief on the qualifying portion of her loan for years 2018, 2019, and 2020. The Commissioner is satisfied that the requirement under section 865(4) of the TCA 1997 that a claim for repayment of tax 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 after the end of the chargeable period. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claim for a refund for years prior to 2018. Furthermore, the Commissioner notes that TRS was abolished with effect from 31 December 2020¹, and therefore the Appellant was not entitled to receive TRS for 2021 or 2022.
15. The Commissioner has sympathy for the Appellant in respect of the circumstances outlined by her in her appeal. He appreciates that the outcome of the appeal will be frustrating and disappointing for her, and he considers that she was entitled to exercise her right to an appeal to the Commission of the Respondent's refusal of her claim.
16. Finally, the Commissioner notes that he has been provided with documentation by the Appellant which appear to concern complaints made against [REDACTED] and [REDACTED], and additionally, he notes criticisms made by her in respect of an accountancy firm (which he understands to have been her former accountants). However, the Commissioner's jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J. at para. 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the Respondent's refusal of her claim was correct in law, and has no equitable jurisdiction or broader power to consider the wider circumstances of her tax and financial relationships, including the relationship between the Appellant and her former accountant, and between the Appellant and her financial service providers.

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 Appellant's application for (i) TRS

¹ <https://www.revenue.ie/en/online-services/services/property/apply-trs-mortgage-interest.aspx>

on 50% (€65,000) of her mortgage drawn down in 2006, and (ii) a refund of TRS for years prior to 2018.

18. The appeal is hereby determined in accordance with sections 949U and 949AL 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.

A handwritten signature in black ink, appearing to read 'Simon Noone', with a stylized, cursive script.

Simon Noone
Appeal Commissioner
24 March 2023