



Between

78TACD2023

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**Appellant**

and

**The 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”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a decision of the Revenue Commissioners (“the Respondent”) on 10 June 2021 to issue a Notice of Assessment in accordance with Section 20 of the Stamp Duties Consolidation Act, 1999 (“SDCA 1999”). The Respondent assessed the Appellant to stamp duty in the sum of €45,500.
2. The liabilities arose as it is the Respondent’s position that the property does not meet the definition of “residential property” in accordance with the provisions of section 1 SDCA 1999, as the property was rated non-residential and subject to commercial rates on 31 December 2019, the year prior to the date of execution of the Deed of Conveyance. Consequently, the Appellant is liable to pay stamp duty on the Deed of Conveyance at the non-residential rate of 7.5%, as opposed to the residential rate of 1%.
3. The appeal proceeded by way of a remote hearing on 7 March 2023. The Appellant was represented by her Solicitor, ██████████ and the Respondent was represented by

██████████ and ██████████ The Appellant was not present at the hearing of the appeal. However, despite no prior notice being given of the Appellant's intention to be absent from the hearing, the Respondent raised no objection.

## Background

4. On 22 December 2020, by Deed of Conveyance, the Appellant purchased a property with an address at the ██████████ ("the property"). Prior to the purchase, the property was a ██████████. In 2020, the ██████████ closed permanently.
5. On 3 February 2021, the Appellant's Solicitor filed a stamp duty return in respect of the Deed of Conveyance. The return stated that the property was a residential, second-hand dwelling and the property's address was stated as ██████████ ██████████.
6. Prior to the stamp duty return being filed, the Appellant contacted the Respondent's Local Property Tax ("LPT") branch to obtain a LPT Property ID number. On 29 January 2021, the Respondent's LPT branch advised the Appellant that it was not in a position to issue a LPT Property ID number, as the property did not meet the definition of "residential property" for Local Property Tax purposes.
7. The Appellant paid to the Respondent, stamp duty in the sum of €7,000 at the residential rate of 1%, based on the purchase price of the property which was €700,000. The Expression of Doubt box was ticked on the stamp duty return form.
8. On 3 February 2021, the Appellant's Solicitor issued correspondence entitled "Expression of Doubt Letter" to the National Stamp Duty Office. The correspondence sets out details of the doubt and the circumstances of the transfer. The correspondence states *inter alia* that:-

*"The property known as ██████████ comprises a property on 0.29 acres or thereabouts. We have today arranged for the stamping of the Deed of Conveyance on behalf of the purchaser at a rate of 1%. In order to facilitate the stamping of the Deed of Conveyance we used the purchaser's current principal private residence LPT ID ██████████ and once the LPT ID for the property the subject of this purchase i.e. ██████████ issues to our client we will then attend to amending the stamp certificate accordingly".*

9. Further, the correspondence states that the Deed of Conveyance should be stamped at the residential rate of 1%, as the Appellant bought the property with the intention of using it as her principal private residence and prior to the completion of the purchase of the

property, planning permission was sought and obtained for a change of use from a commercial building to a dwelling house. The Appellant has submitted correspondence dated 30 November 2020, from ██████ County Council ██████ confirming that the property was subject to commercial rates up to 2020 and that the property was delisted for commercial rates on 30 November 2020.

10. By letter dated 12 March 2021, the Respondent informed the Appellant that it considered that the property does not meet the definition of “residential property” for stamp duty purposes, as the property was rated non-residential as at 31 December 2019, the year prior to the date of execution of the Deed of Conveyance. The Respondent advised that the stamp duty return should be amended, in order to have the correct details input on the return and that the additional liability should be paid within 30 days of the date of issue of the correspondence.
11. By correspondence dated 29 March 2021, the Appellant stated that she cannot file an amended return agreeing to the commercial rate applying, because she does not agree that said rate is applicable. The Appellant requested that the Respondent give the matter additional consideration.
12. On 26 April 2021, the Respondent issued further correspondence to the Appellant advising again, that it is the Respondent’s position that the property does not meet the definition of residential property for stamp duty purposes, in accordance with the provisions of Section 1 SDCA 1999. The Respondent advised again that the stamp duty return should be amended in order to have the correct details input on the return and that the additional liability should be paid within 14 days of the issue of the letter. The Respondent advised that failure to amend the return and remit the outstanding liability will result in the Respondent issuing a Notice of Assessment.
13. On 10 June 2021, the Respondent issued a Notice of Assessment to the Appellant in accordance with Section 20 SDCA 1999. The Respondent assessed the Appellant to stamp duty in the sum of €45,500, in accordance with the provisions of Section 1 SDCA 1999.
14. On 9 July 2021, the Appellant duly appealed to the Commission the Notice of Assessment to stamp duty.

### **Legislation and Guidelines**

15. The legislation relevant to this appeal is as follows:-
16. Section 1 SDCA 1999, Interpretation, *inter alia* provides:-

*“residential property”, in relation to a sale or lease, means –*

*(a) building or part of a building which, at the date of the instrument of conveyance or lease –*

- (i) was used or was suitable for use as a dwelling,*
- (ii) was in the course of being constructed or adapted for use as a dwelling, or*
- (iii) had been constructed or adapted for use as a dwelling and had not since such construction or adaptation been adapted for any other use,*

*and*

*(b) the curtilage of the residential property up to an area (exclusive of the site of the residential property) of one acre;*

*but where –*

- (l) in the year ending on 31 December immediately prior to the date of that instrument of conveyance or lease a rating authority –*
  - (A) has made a rate or has not made a rate in respect of any particular property falling within Schedule 3 to the Valuation Act 2001, or*
  - (B) has not made a rate in respect of any particular property falling within Schedule 4 to the Valuation Act 2001 or*

*.....*

*then the whole or an appropriate part of that property as is referable to ordinary use other than as a dwelling at the date of that instrument of conveyance or lease or, where appropriate, when last ordinarily used, shall not be residential property, in relation to that sale or lease.*

*.....*

17. Section 20 SDCA 1999, Assessment of duty by the Commissioners, *inter alia* provides:-

*(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion, or may express their opinion, with reference to any executed instrument on the following questions:*

- (a) whether it is chargeable with any duty*

*(b) with what amount of duty it is chargeable*

- (2) Where an instrument which is chargeable with stamp duty has not been delivered to the Commissioners for assessment of duty or impressing of stamps, the Commissioners shall make an assessment of such amount of stamp duty as, to the best of their knowledge, information (including information received from a member of the Garda Síochána) and belief, ought to be charged, levied and paid on the instrument; and the accountable person shall be liable for the payment of the stamp duty so assessed unless, on delivery of the instrument to them, the Commissioners make another assessment to be substituted for such assessment.*
- (3) The Commissioners may require to be furnished with a copy of the instrument, together with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable on the instrument, are fully and truly set forth in the instrument.*
- (4) If the Commissioners are of opinion that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it is not chargeable with any duty.*
- (5) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.*

.....

## **Submissions**

### *Appellant*

18. ██████ made submissions on behalf of the Appellant. The Commissioner sets out hereunder a summary of the submissions made:-

- (i) On 14 November 2019, the Appellant contracted to acquire a property in ██████ ██████, which had a closing date of 30 November 2020. The agreed purchase price was €700,000. At the time of purchase, the property was used as a ██████. The purpose of the extended closing date was to facilitate an application to ██████ to convert the premises back to residential use.

- (ii) On 22 December 2020, the Vendor's Solicitor issued a completion notice, as there was immense financial pressure on the Vendor to close the sale before Christmas. The purchaser obliged even though she had until late January 2021 to close the sale. The Deed of Conveyance was dated 22 December 2020, stamped at the residential rate of 1% and the return was filed.
- (iii) On 3 February 2021, an expression of doubt letter was sent to the Respondent. The Respondent issued an undated letter, assessing the stamp duty at €52,500 i.e. the full commercial rate. ■■■■ had issued correspondence dated 30 November 2020, stating that the property was no longer a commercial premises and it was to be delisted as such. The Appellant maintains that the property is residential and is entitled to be stamped accordingly.
- (iv) On 19 June 2021, the Respondent wrote to the Appellant to state that it was objecting to the assessment at the residential rate of 1%, as the property purchased did not meet the definition of "residential property" as defined in section 1 SDCA 1999. The Appellant maintains that the property falls within the definition and even if that is not accepted, it is submitted the matter could and should be dealt with in that manner in this appeal.
- (v) If the Respondent continues to insist otherwise, it is submitted that as there was no requirement to stamp the Deed of Conveyance until January 2021, therefore, it may be possible to file an amended return to reflect that position. The Appellant could have and should have waited until January 2021 and it may be possible to simply void the Deed of Conveyance at this point and execute a new Deed of Conveyance.
- (vi) Further, or in the alternative, the Appellant maintains that she would be entitled to a refund of any stamp duty paid, under the Residential Development Refund Scheme, in particular Part 7, section 83D. The Respondent can exercise its discretion now against payment of the full stamp duty and then a subsequent reclaim of the stamp duty, as a sensible and pragmatic way of disposing of this appeal.
- (vii) The language of section 1 SDCA 1999 is misleading in terms of the word "but". It would have been different if the legislature used the word "and". There should be a pragmatic and practical approach taken on that basis.

*Respondent*

19. [REDACTED] gave evidence and made submissions on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given and submissions made:-

- (i) The property purchased by the Appellant does not meet the definition of residential property for stamp duty purposes in accordance with Section 1 SDCA 1999, and therefore the Deed of Conveyance is liable to stamp duty at the non-residential rate of 7.5%.
- (ii) Section 1 SDCA 1999, defines residential property for stamp duty purposes. The definition links to the rating system operated by local authorities. If, on 31 December in the calendar year before the transfer, the rating of the building was non-residential, the building is treated as non-residential for stamp duty purposes.
- (iii) As the property was rated non-residential and subject to commercial rates on 31 December 2019, the year prior to the date of execution of the Deed of Conveyance, the property is non-residential for stamp duty purposes and the Deed of Conveyance is liable to be stamped at the non-residential rate of 7.5%.
- (iv) In order to file the property type as residential on the stamp duty return, the agent input a LPT Property ID number allocated to a property at [REDACTED] [REDACTED] was the Appellant's principal private residence at the time, thereby delivering an incorrect stamp duty return.
- (v) Section 8A SDCA 1999, provides for a penalty of €3,000 to be imposed where an incorrect return relating to an instrument is filed with the Respondent, in circumstances where the person is aware that the facts filed are incorrect

**Material Facts**

20. Having read the documentation submitted, and having listened to the evidence and oral submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

- (i) On 14 November 2019, the Appellant contracted to acquire a property in [REDACTED] [REDACTED], which had a closing date of 30 November 2020.
- (ii) On 22 December 2020, by Deed of Conveyance, the Appellant purchased a property with an address at the [REDACTED].

- (iii) Prior to the purchase, the property was a [REDACTED] which operated under the name [REDACTED]". In 2020, the [REDACTED] closed permanently.
- (iv) On 3 February 2021, the Appellant's Solicitor filed a stamp duty return in respect of the Deed of Conveyance.
- (v) Stamp duty in the sum of €7,000 was paid at the residential rate of 1%, based on the purchase price of the property which was €700,000.
- (vi) The return stated that the property was a residential, second-hand dwelling, and the property's address was stated as [REDACTED].
- (vii) The Appellant input a LPT Property ID number allocated to a property at [REDACTED] which was the Appellant's principal private residence at the time, thereby delivering an incorrect stamp duty return.
- (viii) The property was rated non-residential and subject to commercial rates on 31 December 2019, the year prior to the date of execution of the Deed of Conveyance.
- (ix) [REDACTED] confirmed that the property had been subject to commercial rates up to 2020 and that the property was delisted for commercial rates on 30 November 2020.
- (x) The Appellant bought the property with the intention of using it as her principal private residence.
- (xi) Prior to the completion of the purchase of the property, planning permission was sought and obtained for change of use from a commercial building to a dwelling house.
- (xii) By Order dated 4 June 2020 and in accordance with Planning and Development Act 2020 as amended, [REDACTED] granted planning permission to the Appellant for the development of the property, as per the plans submitted with the application for planning permission.

### **Analysis**

21. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 22, Charleton J. stated



*“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”.*

22. The Appellant’s appeal relates to the sole question of whether the property was a “residential property” as defined in section 1 SDCA 1999 and the correct rate of stamp duty to be applied to the Deed of Conveyance. The Appellant contends for a residential rate of 1%. In contrast, the Respondent argues that the non-residential rate of 7.5% is applicable to the instrument.

23. Section 1 SDCA 1999 defines “residential property” for stamp duty purposes. The definition links to the rating system operated by local authorities, such that, if on 31 December in the calendar year before the transfer the rating of the building was non-residential, the building is treated as non-residential for stamp duty purposes.

24. The Appellant contends that there is some ambiguity in relation to the interpretation of “residential property” in section 1 SDCA 1999, as a result of the use of the word “but”. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the judgment of Kennedy CJ in *Revenue Commissioners v Doorley* [1933] I.R. 750 at page 765 wherein he held that:

*"The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person is to be subject to taxation unless brought within the letter of the taxing statute, that is...as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament."*

25. In addition, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 and the judgment of O’Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 at page 74:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes*

*Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

*"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration*

*and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*

26. The Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. In addition, context is critical.
27. With the aforementioned approach in mind the Commissioner has considered section 1 SDCA 1999 and the definition of “residential property”. The Commissioner is satisfied that the words of the statutory provision are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of the section means, that if a property was rated non-residential and subject to commercial rates in the year ending on 31 December immediately prior to the date of execution of the Deed of Conveyance, the property is non-residential for stamp duty purposes and the Deed of Conveyance is liable to be stamped at the non-residential rate of 7.5%.
28. Turning to the facts of the within appeal, the Commissioner notes that on 22 December 2020, the Appellant purchased the property by Deed of Conveyance. The Commissioner finds as a material fact that it was the Appellant’s intention that the property be used as a residential property and as her principal private residence. This is evidenced by the application made in 2020 for a change of use and the subsequent delisting of the property, in addition to the application for planning permission on 28 February 2020 and the subsequent grant of planning permission by █████ on 4 June 2020, as per the documentation submitted by the Appellant prior to the hearing of the appeal.
29. The Commissioner has considered the Appellant’s submission that the contract was signed on 14 November 2019 with a closing date of 30 November 2020, to allow the Appellant time to obtain the necessary planning permission. The Appellant submits that both her Solicitor and the Vendor’s Solicitor were aware at all times that the purpose of buying the property, was to obtain planning permission to convert the property to residential use and that this is reflected in pre contract discussions and acknowledged and reflected in the final contract to purchase.
30. In addition, the Commissioner notes the Appellant’s explanation, such that when her Accountant could not obtain an LPT number in time to complete the stamp duty filing, that

he advised her to use the LPT number of her current principal private residence in order to stamp and file the Deed of Conveyance. The Appellant states that this was clearly stated in the expression of doubt filed and that she did not intend to mislead anyone. The Commissioner takes a dim view of this approach to the filing of such important documents.

31. The Appellant's Solicitor submits that due to financial pressure on the Vendor, the Deed of Conveyance was executed in December 2020, but that the Appellant could have waited until January 2021 to execute the Deed of Conveyance. He stated that had this occurred, the Appellant would not be liable for the non-residential rate of stamp duty of 7.5%.
32. The Appellant's Solicitor argues for possible solutions to the liabilities in the within appeal. The Commissioner commends the Appellant's representative for advocating a practical and sensible approach to the situation herein. Nevertheless, the Commissioner's jurisdiction is limited to considering "*the assessment and the charge*", as stated by Murray J. at paragraph 64 of the Court of Appeal's judgment in *Kenny Lee v The Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the liability imposed by the Respondent was correct in law, and has no equitable jurisdiction or broader power to consider circumstances not directly pertaining to the imposition of the charge to tax.
33. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.
34. Having considered the facts and submissions, together with the documentation submitted prior to the hearing of the within appeal and applying the legislative provisions, the Commissioner is satisfied there is no doubt that in circumstances where the property was rated non-residential and subject to commercial rates on 31 December 2019, the year prior to the date of execution of the Deed of Conveyance on 22 December 2020, the property is not a "residential property" in accordance with the provisions of section 1 SDCA 1999, for stamp duty purposes.
35. Accordingly, the Commissioner finds that the Appellant has failed to show on balance that the tax is not payable and consequently, the Appellant's appeal fails. The Respondent was correct to raise the Notice of Assessment as the Deed of Conveyance is liable to be stamped at the non-residential rate of 7.5%, as opposed to the residential rate of 1%.

## Determination

36. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the tax is not payable. Therefore, the Notice of Assessment in sum of €45,500, shall stand.
37. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to check to see whether her legal rights were correctly applied.
38. This appeal is hereby determined in accordance with Part 40A TCA 1997 and in particular, section 949 thereof. 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.



Claire Millrine  
Appeal Commissioner  
24 March 2023