



90TACD2023

Between

[REDACTED]

Appellants

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal of an assessment raised by the Revenue Commissioners (“the Respondent”) of 5 November 2021 pursuant to section 477C(20) of the Taxes Consolidation Act 1997 (“the TCA 1997”). The Respondent assessed [REDACTED] [REDACTED] (“the first appellant”) as having a tax liability in the amount of €8,970 arising from an “appropriate payment” that it made to her on 2 November 2017 on foot of a joint application with [REDACTED] [REDACTED] (“the second appellant”) under the Help to Buy Scheme (“the scheme”). [REDACTED] [REDACTED] is assessed to tax jointly with the second appellant. The sum assessed by the Respondent represents 60% of the payment made.
2. This appeal proceeded by way of oral hearing that took place on 8 March 2023. The Commissioner had the benefit of written and oral argument made on behalf of both parties.

Background

3. On 26 September 2017, the Appellants entered into a contract for the purchase of [REDACTED] [REDACTED] (“the property”).
4. On the same date, the Appellants made a claim under the scheme in the amount of €14,950. This represented 5% of the agreed purchase price of the property.

5. The claim having been verified, on 2 November 2017 the Respondent paid the Appellants the sum of €14,950.
6. The Appellants became the owners and occupiers of the property on 1 June 2018.
7. The Commissioner heard evidence from the second appellant that he and the first appellant opted to put the property on the market again in February 2021. The second appellant also gave evidence that having been made aware of recoupment provisions in the scheme, he contacted the Respondent's telephone helpline on 28 April 2021 to seek information and assistance on the matter. He said that the person who answered his call was unable to offer any such assistance beyond advising him to contact the Respondent again upon completion of the sale.
8. On 14 May 2021, the Appellants completed the sale of the property to a new purchaser.
9. The Commissioner heard evidence that the original date for the completion of the sale of the property was 31 May 2021. However, in order to assist the purchaser, who did not have alternative accommodation, this was brought forward by a little over two weeks.
10. After the Appellants notified the Respondent of the sale of the property, the Respondent initiated a review of the payment made under the scheme.
11. On 5 November 2021, the Respondent issued a notice of assessment in respect of the year 2017 in the name of the first appellant under section 477C(20) of the TCA 1997.
12. This assessment was appealed by way of notice of appeal delivered to the Commission on 5 December 2021.

Legislation and Guidelines

13. Section 477C of the TCA 1997 permits buyers to claim an "appropriate payment" from the Respondent to assist them in the purchasing of their first home, referred to in the legislation as a "qualifying residence" or "self-build qualifying residence". The level of the payment available to buyers is capped under section 477C(5) of the TCA 1997. The cap in the Appellants' case was 5% of the agreed purchase price of the property.
14. Section 477C(17) of the TCA 1997 makes provision for the recoupment of all or part of an appropriate payment made under the scheme where specified conditions have not been met. It provides:-

“(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)—

(I) within the first 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 the amount of the appropriate payment,

(II) within the second 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 80 per cent of the amount of the appropriate payment,

(III) within the third 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 60 per cent of the amount of the appropriate payment,

(IV) within the fourth 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 40 per cent of the amount of the appropriate payment, or

(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.”

15. Section 477C(20) of the TCA 1997 then provides:-

“(a) Where a person who is liable to pay to the Revenue Commissioners an amount referred to in subsection (17)(b) or paragraph (a), (b), (c) or (d) of subsection (18) fails to pay that amount, a Revenue officer may, at any time, make an assessment or an amended assessment on that person for a year of assessment or accounting period, as the case may be, in an amount that, according to the best of that officer's judgement, ought to be charged on that person.

(b) A person aggrieved by an assessment or an amended assessment made on that person under this subsection may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment or amended assessment.”

Submissions

Appellants

16. It was submitted by the Appellants that the assessment should be reduced by €2,990.00 on the grounds that the recoupment rate of 40% under section 477C(17)(b)(ii)(IV) of the TCA 1997, rather than that of 60% under 477C(17)(b)(ii)(III), should be applied.
17. The Appellants submitted that this should occur because they had made efforts to contact the Respondent regarding the recoupment consequences of selling the property, but had received no guidance when they did so other than the suggestion that they make contact again once the sale had been completed.
18. In the Appellants' Notice of Appeal it was stated that *“the original date for the closing of the sale was [31 May 2021], if this had been the case, we wouldn't have had to appeal this as we would be only paying back 40% of the original claim.”*
19. The second appellant stressed in the course of submission that neither he nor the first appellant were persons expert in tax law. It was submitted that the Commissioner should therefore exercise discretion in their favour by finding that the repayment should be 40% of the payment made to them under the scheme.

Respondent

20. The Respondent submitted that the legislation was clear. Where a qualifying property was sold within five years of the receipt of an appropriate payment, section 477C(17) of the TCA 1997 required that some or all of it be repaid. The amount to be repaid depended on the point in time at which occupancy of the qualifying property began and ceased. As the Appellants had ceased to occupy within three years of the date of occupancy beginning,

section 477C(17)(b)(ii)(III) prescribed that the repayment figure be 60% of the payment previously received. Payment of 40% of the sum received would only apply if they had delayed the cessation of their occupancy of the property to on or after 1 June 2021. In this respect, the Respondent noted that even if the Appellants had waited until 31 May 2021 to give up possession, the rate of 60% would apply as this was still within three years from the date that their occupancy of the qualifying property commenced.

Material Facts

21. The facts material to this appeal were not in dispute and are as follows:-

- on 26 September 2017 the Appellants, who are assessed jointly to tax, made a claim to the Respondent for a payment under the scheme in the amount of €14,950;
- on 2 November 2017, following verification, the payment was made by the Respondent to the Appellants in this amount;
- on 1 June 2018 the Appellants became the owners and occupiers of the property in respect of which they received the appropriate payment;
- on 14 May 2021 the Appellants completed the sale of the property to a new purchaser and ceased to occupy it;
- having been notified of this event by the Appellants, the Respondent issued an assessment dated 5 November 2021 in the name of the first Appellant for repayment of the sum of €8,970, which figure represents 60% of the payment previously made under the scheme;
- the Appellants duly appealed this assessment on 5 December 2021.

Analysis

22. To begin with, it is necessary to emphasise that the function of the Commissioner is limited to determining whether tax is owed, and if so the correct amount, by reference to the relevant legislation, whether national or European in origin. As the Court of Appeal made clear in *Lee v Revenue Commissioners [2021] IECA 18*, the Commissioner does not have the power to depart from or disapply legislation on the grounds, for example, that it operates in a supposedly unfair way when applied to the facts of an individual case.

23. In oral argument the second appellant accepted that he and his partner, the first appellant, had sold the property within a period of three years of commencing their occupancy of the property. He submitted, however, that this legislation governing the scheme was complex

and they were not persons who had legal training or were expert in tax matters. He said that for this reason he had approached the Respondent for assistance, but little if any was provided. He asked, in essence, that the sum assessed in the name of the first named Appellant be adjusted on the grounds of fairness and equity.

24. The Commissioner has sympathy for the Appellants, who it is evident acted with openness and transparency in their dealings with the Respondent. Despite this, however, it must be held that the assessment under appeal is correct. Section 477C(17)(b)(ii) of the TCA 1997 sets out rules for the repayment of appropriate payments made under the scheme. The amounts which must be recovered by the Respondent range from repayment in full where occupancy ceases within the first year, to 20% where it ceases after four but within five years. It is clear from the wording of subsection (17) that these rules are mandatory in nature and it is not within the competence of the Commissioner to disapply them.
25. There being no dispute that occupancy of the property by the Appellants ceased within three years of it commencing, it can only be found by the Commissioner that the figure of €8,970, representing 60% of the payment of €14,950 received, is in accordance with the requirements section 477C(17)(b)(ii)(III) of the TCA 1997.
26. It is perhaps worth noting that even if the Appellants had delayed the sale of the property and the ceding of occupancy to 31 May 2021, as they suggested they might have done had they been provided with further information by the Respondent, this would not have changed the amount repayable by the Appellants. This is so because the transfer of occupancy would have occurred, in any event, within a period of three years. The potential delay of the sale is however hypothetical and not determinative of the outcome of this appeal, which must be decided on the facts as they present themselves.

Determination

27. The Commissioner affirms the appealed assessment of 5 November 2021 which assessed the first appellant as having a liability of €8,970. The Commissioner appreciates that this finding may be of disappointment to the Appellants. He wishes to indicate however that they were correct to appeal to establish their rights and entitlements under legislation.
28. This appeal has been determined in accordance with section 949AK of the TCA 1997. This determination contains full findings of fact and law. Any party dissatisfied with the determination has the right to appeal on a point or points of law only within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.

A handwritten signature in black ink, appearing to read 'COHiggins'.

Conor O'Higgins
Appeal Commissioner
29 March 2023