



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

130TACD2024

████████████████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal by ██████████ (“the Appellant”) to the Tax Appeals Commission (“the Commission”) against an assessment to Capital Gains Tax (“CGT”) for the tax year 2021 in the amount of €17,324, raised by the Revenue Commissioners (“the Respondent”).
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. The Appellant had previously bought three investment properties with her husband. In 2020, the Appellant and her husband were granted an order of divorce. It was a term of the divorce that the three investment properties would be sold.
4. The Appellant sold one of the investment properties in 2021 and made a chargeable gain for the year in the amount of €52,497. On 18 November 2022, the Respondent raised an assessment to CGT for 2021 in the amount of €17,324.

5. The Appellant sold the remaining two investment properties in 2022 at a loss. She contends that these losses should be put against her CGT liability for 2021. Her argument is that she intended to sell the three investment properties in 2021, but that the Covid-19 pandemic delayed finalisation of the sale of two of them until 2022, and that she should not be penalised for this.
6. The Appellant appealed against the CGT assessment to the Commission on 31 October 2023. While the appeal was made late, there was no objection received from the Respondent, and having considered the reasons provided by the Appellant for the lateness of the appeal, the Commission accepted the appeal.
7. On 29 April 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.
8. On 6 June 2024, the Commission confirmed to the parties that the appeal would be determined pursuant to section 949U. On 11 June 2024, the Respondent issued correspondence to the Appellant, seeking further information from her, and copied the correspondence to the Commission. In response, the Commission asked the Respondent to explain why it had issued correspondence to the Appellant after the parties had been notified that the appeal had been queued for determination. The Respondent provided an explanation and apologised. The Commissioner will have no regard to the additional correspondence issued by the Respondent on 11 June 2024 for the purposes of this determination.

### **Legislation and Guidelines**

9. Section 31 of the TCA 1997 states that

*“Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting –*

*(a) any allowable losses accruing to that person in that year of assessment, and*

(b) *in so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1974-75)."*

## **Submissions**

### *Appellant*

10. In her Statement of Case, the Appellant stated that

*"It was our intention to sale all three properties during 2021. Had things gone according to plan no capital gains tax would have been owed to [the Respondent].*

*However due to the global Covid pandemic the Irish Government imposed a nationwide lockdown and many restrictions which affected work practices and interactions during large periods of time during 2021. As a result of these circumstances, which were beyond our control, it became impossible to complete the sale of the three properties during 2021.*

*The sale of one property was finalised during 2021. Sales were agreed and deposits were paid for each of the other two properties during 2021, balances were paid in early 2022.*

*I contend therefore due of the unprecedented circumstances that existed at the time I not be held liable for capital gains tax related to the sale of the three properties."*

11. In further submissions, the Appellant argued that it would be unreasonable "[t]o calculate CGT tax liability for 2021 as if it were a normal year."

### *Respondent*

12. In its Statement of Case, the Respondent stated that there was no scope in legislation to reduce or remove the Appellant's CGT liability.

## **Material Facts**

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

13.1. The Appellant sold an investment property in 2021 on which she made a chargeable gain. The Respondent subsequently raised an assessment to CGT for 2021 in the amount of €17,324.

13.2. The Appellant sold two investment properties in 2022 on which she made a loss.

- 13.3. The Respondent refused to allow the Appellant to deduct the 2022 losses from the 2021 gain.

### **Analysis**

14. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect not to allow her to claim the losses incurred by her on the sale of the investment properties in 2022 against the gain realised in 2021. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*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.*”
15. In this appeal, it is not in dispute that the Appellant made a capital gain in 2021, and made capital losses in 2022. She has sought to deduct the losses incurred in 2022 from the gain incurred by her in 2021.
16. The Commissioner is satisfied that section 31 of the TCA 1997, as quoted above, allows for the deduction of losses accruing in the year of assessment from chargeable gains, and also allows for the carrying forward of earlier, unused losses. However, the Commissioner does not agree that the TCA 1997 allows for losses accrued in a subsequent year to be retrospectively applied to reduce a taxpayer’s CGT liability for a previous year.
17. Consequently, the Commissioner does not agree with the Appellant that she should be entitled to deduct her 2022 losses from her 2021 gain to reduce her assessment to CGT for 2021. The Appellant has argued that, but for the impact of the Covid-19 pandemic, the sale of the three investment properties would have taken place in 2021, with the result that the losses would have cancelled out the gain, and her assessment would have been reduced to nil.
18. The Commissioner has sympathy for the Appellant in this instance. It is undeniable that Covid-19 impacted every aspect of society, including the process for transactions in property. However, the fundamental difficulty the Appellant faces in this appeal is that section 31 of the TCA 1997 does not allow for subsequent losses to be retrospectively deducted from earlier gains. The Oireachtas did not amend this rule on computation of capital gains on foot of the Covid-19 pandemic.
19. The Commissioner’s role is confined to considering whether the Respondent’s refusal to allow the Appellant to deduct her 2022 losses from her 2021 gain was correct in law, and

he has no equitable jurisdiction or power to disapply the clear provisions of section 31, even in circumstances where property transactions were delayed as a result of the impact of the Covid-19 pandemic.

20. Therefore, while the Commissioner sympathises with the Appellant, he is satisfied that the Respondent correctly interpreted and applied section 31 of the TCA 1997, and therefore the appeal is unsuccessful.

### **Determination**


21. 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 determines that the Appellant is not entitled to deduct her 2022 capital losses from her 2021 capital gain, and the Respondent's decision to refuse such a deduction stands.
22. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

23. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

24. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone  
Appeal Commissioner  
30 July 2024