



Between

23TACD2024

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against the refusal of the Revenue Commissioners (“the Respondent”) to allow a refund in the amount of €2,925 for farm consolidation relief, on the ground that the sale and purchase of the relevant lands did not take place within 24 months of each other.
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 ██████████ 2019, the Appellant sold her landholding in ██████████ for €215,000, and a stamp duty return was filed on ██████████ 2020. On ██████████ 2022, the Appellant purchased land in ██████████ for €45,000, and a stamp duty return was filed on the same date. The stamp duty arising on the purchase was €3,375 (i.e. 7.5%). The Appellant claimed farm consolidation relief pursuant to section 81C of the Stamp Duties Consolidation Act 1999 (“SDCA 1999”), which allows for a reduced stamp

duty rate of 1% on qualifying land. Therefore, she claimed that she owed stamp duty of €450, with a refund of €2,925 arising.

4. On 25 October 2022, the Respondent refused the Appellant's claim for a refund. In its decision letter, it stated inter alia that

“You have referred to allowance being given in relation to delays suffered due to the unusual circumstances surrounding Covid. To date no such allowance exists in Stamp Duty or associated legislation. This office cannot make such an allowance when it is contrary to existing legislation.

The terms of section 81c of the Stamp Duty Consolidation Act only refers to a 24-month period associated with the Sale & Purchase for Farm Consolidation Relief, as mentioned above there is no allowance for delays due to Covid restrictions... The difference between the dates of execution of the 2 instruments is a few days over 32 months, indicating ineligibility for the relief.”

5. On 27 October 2022, the Appellant appealed the Respondent's decision to the Commission. On 14 April 2023, the Commission notified the parties that the appeal was considered suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the appeal proceeding without an oral hearing within 21 days of the notice. No objection was received from either party. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

6. Section 81C of the SDCA 1999 states inter alia that

“(2) This section applies to a purchase of qualifying land by a farmer on any day (in this section referred to as the 'calculation day') falling within the relevant period.

(3) Subject to subsections (4) and (5), stamp duty shall be chargeable at the rate of one per cent on an instrument executed on or after 1 January 2018 giving effect to the purchase of qualifying land to which this section applies as if it were a purchase of qualifying land made in consideration of a sum determined by the formula -

(P — S)

where -

P is the aggregate of -

(a) the value of the qualifying land being purchased, and

(b) the value of all other qualifying land purchased by the farmer in the relevant period where the date of the purchase falls in the period of 24 months ending on the calculation day and where any such purchase was treated by virtue of this subsection as having been made in consideration of a lesser amount in consequence of a sale of qualifying land being made before the commencement of that 24 month period, that lesser amount shall be treated as the value of that purchase,

and

S is the aggregate of the value of all the qualifying land sold by the farmer in the relevant period where the date of the sale falls in the period of 24 months ending on the calculation day, to the extent that it has not given rise to a repayment of duty under subsection (5) in respect of a purchase of qualifying land made before the commencement of that 24 month period.”

7. The Respondent’s “Tax and Duty Manual – Farm Consolidation Relief, Part 7: section 81c” states inter alia that

“The purpose of farm consolidation relief is to encourage the consolidation of farm holdings, to reduce fragmentation and to improve the operation and viability of farms...

*Stamp duty at a **reduced rate of 1%** (usual rate is 7.5%) is applied to the excess of the value of the land acquired over the value of the land disposed of, where the acquisition and disposal take place within a 24-month period of each other...*

*The date of sale or purchase is the date on which the deed of transfer is executed. A sale may take place either before or after a purchase, provided they both take place **within a period of 24 months of each other**. If the sale takes place before the purchase, the relief is given at the time of the purchase.”* (emphasis in original)

Submissions

Appellant

8. In her Statement of Case to the Commission, the Appellant stated inter alia that

“The single reason that we could not consolidate our farm holding was because of the fact that the Country was shut down for over 12 months due to COVID 19 restrictions. This force majeure event was outside of our control and in March 2020 life as we know it was turned on end. There was no activity in the markets between March 2020 and

the end of 2021/early 2022. The restrictions associated with COVID 19 were such that only essential travel was possible with at one stage a 5km travel restriction imposed. It is fair to say well in excess of 12 months was lost by the markets to COVID and it is only in 2022 that the market has returned to 'normal'.

As soon as the market opened, we endeavoured to purchase lands and in spite of putting a number of bids on lands we were not successful until we agreed the sale of the lands at [REDACTED] the subject of this stamp duty rebate request.

It is acknowledged that the transaction is outside the time allowed under S81C however I was advised in correspondence dated the [REDACTED] 2022 that "Revenue can consider refund claims where requirements were delayed by COVID related restrictions which resulted in you falling outside the time normally allowed." At all times we acted on the advice of Revenue and only pursued this claim on their advice.

I note in the refusal letter it is noted that the legislation does not allow for an allowance for COVID. I contend that it is not feasible to amend all primary legislation to allow for the impact of a worldwide pandemic, COVID 19 but that the application stands once the period is readjusted to take account of the standstill periods as a result of the 'force majeure' event."

Respondent

9. In its Statement of Case, the Respondent stated that:

"It is the Respondents' position that a stamp duty refund cannot apply to a refund application not completed within the 24-month time limit stipulated under the provisions of Section 81C SDCA...

On [REDACTED] 2022, a query was submitted to the National Stamp Duty Office in relation to claiming Farm Consolidation relief, a response could not be issued at that time as extra information was required

On [REDACTED] 2022, after clarification of details relating to the [REDACTED] 2022 query, a response was issued to the appellant. The response gave guidance on the next steps required and it also stipulated that "each claim would be judged on a case-by-case basis".

On [REDACTED] 2022, a claim was submitted by the appellant. The basis of the refund application was

On [REDACTED] 2019, the appellant sold their landholding in [REDACTED] [REDACTED] for €215,000... Stamp Return filed in respect of deed dated 20th January 2020.

On [REDACTED] 2020 [sic], the appellant purchased land in [REDACTED] for €45,000... Stamp Return filed in respect of deed dated [REDACTED] 2020 [sic].

On [REDACTED] 2022, the stamp return for the purchase was amended by the filer to claim Farm Consolidation relief on behalf of the appellant.

After examination of the claim, it was noted that the Farm Consolidation, on which the claim was based, was not completed within the 24-Month period required by Section 81C SDCA. The claim was deemed ineligible for refund.

On [REDACTED] 2022, Revenue Officer... issued an email notifying the appellant the refund application was outside the 24-month time limit for stamp duty refunds under Section 81C SDCA. The appellant was requested to have the filer reverse the amendment to the Stamp Duty Instrument which claimed the relief.

After email requests from the appellant ([REDACTED] [REDACTED]) to review the claim, the claim was fully reviewed on 25th October 2022.

On 25th October 2022, a letter was issued to the appellant. The reviewed findings, the right to appeal the finding and the associated time limit was outlined in this letter."

Material Facts

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

10.1. The Appellant sold her landholding in [REDACTED] for €215,000 on [REDACTED] [REDACTED] 2019. A stamp duty return was filed on [REDACTED] 2020.

10.2. The Appellant purchased land in [REDACTED] for €45,000 on [REDACTED] 2022. A stamp duty return was filed on [REDACTED] 2022.

10.3. The stamp duty arising on the purchase was €3,375. The Appellant claimed farm consolidation relief, which would provide for stamp duty of €450, with a refund of €2,925 arising to the Appellant.

10.4. On 25 October 2022, the Respondent refused the Appellant's claim for a refund, on the ground that the deed of sale of the land in [REDACTED] and the deed of purchase of the land in [REDACTED] were executed more than 24 months apart.

Analysis

11. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her farm consolidation relief. 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.*"
12. The Oireachtas has provided for farm consolidation relief to encourage the consolidation of farm holdings, to reduce fragmentation and to improve the operation and viability of farms. However, it is clear from section 81C(3) of the SDCA 1999 that purchase of land must be made within 24 months of a qualifying sale. This is confirmed by the Respondent's Tax and Duty Manual, as quoted above.
13. In this appeal, it is accepted by the Appellant that the sale and purchase took place more than 24 months apart. The Appellant sold land in [REDACTED] on [REDACTED] 2019, and purchased land in [REDACTED] on [REDACTED] 2022. Therefore, the transactions took place 32 months apart. In passing, the Commissioner notes that the Respondent's Statement of Case states that the purchase of land took place on [REDACTED] 2020, rather than 2022. The Commissioner is satisfied that this is obviously an error, as both the Appellant's own submissions, and the relevant stamp duty returns which are before him, state that the purchase took place in 2022.
14. The Appellant submits that the effect of the Covid-19 pandemic was to shut down the market in land between March 2020 and late 2021/early 2022. She submits that this should be treated as a *force majeure* event and that therefore the 24 month time limit should not apply.
15. The Commissioner has sympathy for the Appellant in this instance. It is undeniable that Covid-19 hugely impacted every aspect of society, and the Commissioner has no doubt that this included the market in farmland. The Commissioner does not dispute the Appellant's claim that the pandemic effectively "shut down" land sales between early 2020 and late 2021/early 2022.

16. However, the insurmountable difficulty the Appellant faces in this appeal is that section 81C of the SDCA 1991 clearly requires that qualifying sales and purchases take place within 24 months of each other. There is no scope in the section for the extension of this time, and the Oireachtas did not extend it on foot of the Covid-19 pandemic.
17. The Commissioner's role is confined to considering whether the Respondent's refusal of the Appellant claim was correct in law, and he has no equitable jurisdiction or power to disapply the clear provisions of section 81C, even in circumstances such as this where, through no fault of her own, the Appellant was unable to purchase land until the Covid-19 restrictions were lifted.
18. In her Statement of Case, the Appellant has sought to rely on *Poole v O'Sullivan* [1993] 1 IR 484 to contend that "*the lock down periods should be taken into consideration in applying the timelines between sale and purchase of lands.*" In that case, the High Court (Morris J), approved the following comments from Megarry J in *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336:

"There are a number of cases which support the general rule that a statutory period of time whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration on the last day of the period. That rule remains; but there is a limited but important exception or qualification to it... If the act to be done by the person concerned is one for which some action by the Court is required, such as issuing a writ, and it is impossible to do that act on the last day of the period because the offices of the Court are closed for the whole of that day, the period will prima facie be construed as ending not on that day but at the expiration of the next day upon which the offices of the Courts are open and it becomes possible to do the act."

19. The judgment in *Poole v O'Sullivan* was concerned with a situation where the period prescribed by the Statute of Limitations in that case expired over a weekend, when the Central Office of the High Court was closed. Morris J concluded that, in such circumstances, the period should be extended until the next working day. The Commissioner is satisfied that this very specific and limited extension could not apply as argued for by the Appellant, so that the time limit prescribed by section 81C of the SDCA 1991 would essentially be stopped for well over a year due to the impact of Covid-19. Indeed, Morris J stated that,

"The basis for the Court's reasoning in Pritam v. S. Russell and Sons was the proposition that there is no power vested in the Court to enlarge a period of time laid down by statute, however, the Court can and should define the period."

If the High Court cannot enlarge a period of time laid down by statute, it is axiomatic that the Commission, which is a creature of statute, cannot do so.

20. Finally, the Commissioner notes that, in correspondence from the Respondent to the Appellant dated [REDACTED] 2022, the Respondent's officer stated that, "*Revenue can consider refund claims where requirements were delayed by COVID related restrictions which results in you falling outside the time normally allowed. Each claim will be judged on a case-by-case basis.*"
21. The Commissioner has no supervisory jurisdiction over the Respondent, and has no jurisdiction to take into account informal correspondence between a taxpayer and the Respondent. However, it seems to the Commissioner that the Appellant understandably relied on this comment from the Respondent's officer, and was subsequently aggrieved by the Respondent's refusal of her claim. No explanation has been provided to the Commissioner as to why the Appellant was told that the period of time could be extended. However, he is satisfied that there is no scope within section 81C to extend the 24 month time period, and he considers that the Respondent's officer erred in suggesting that her claim could be granted on a discretionary basis.
22. In conclusion, the Commissioner sympathises with the Appellant, who was unable to purchase land due to the restrictions imposed during the Covid-19 pandemic. However, he is satisfied that her claim for farm consolidation relief was outside the time period prescribed by section 81C of the SDCA 1991, and therefore her appeal is refused.

Determination

23. 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 farm consolidation relief in the amount of €2,925, and the Respondent's decision to refuse the relief stands.
24. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 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

25. 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

26. 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.

A handwritten signature in black ink, appearing to read 'Simon Noone', is positioned above the typed name and title.

Simon Noone
Appeal Commissioner
04 December 2023