



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

208TACD2025

Between

[REDACTED]

**Appellant**

and

**Revenue Commissioners**

**Respondent**

---

**Determination**

---

## **Contents**

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	5
Submissions .....	7
Appellant .....	7
Respondent.....	8
Material Facts .....	8
Analysis .....	9
Determination .....	11
Notification .....	11
Appeal .....	11

## **Introduction**

1. This is the of appeal of [REDACTED] (“the Appellant”) of an assessment of the Revenue Commissioners (“the Respondent”) dated 29 January 2025, made under section 477C(20) of the Taxes Consolidation Act 1997 (“the TCA 1997”). This provision allows for the recovery by the Respondent of an “appropriate payment”, or part thereof, previously made to a person or persons under “Help to Buy”. Help to Buy is a statutory scheme designed to afford buyers of residential property relief from income tax and DIRT that they have paid in the preceding four years, for the purpose of assisting them in the purchase of their first home. The appeal is made to the Tax Appeals Commission (“the Commission”) under section 949I of the TCA 1997.
2. This appeal proceeded on the basis of facts agreed by the parties, which are set out in full at paragraph 20 of this Determination. In determining this appeal, the Appeal Commissioner has had the benefit of written and oral submissions made by both parties grounded on those agreed facts.

## **Background**

3. The Appellant is a person who is assessed to tax jointly with his spouse, [REDACTED], under section 1017 of the TCA 1997. [REDACTED] is hereafter referred to in this Determination as the spouse of the Appellant.
4. On 28 January 2020, the Appellant and his spouse applied for a payment under the Help to Buy scheme in respect of a residence in [REDACTED] (“the qualifying residence”). On foot of this application they were approved in principle to be entitled to an “appropriate payment” in the overall amount of €5,416.
5. On 7 October 2020, the Appellant and his spouse made their claim under section 477C(3) of the TCA 1997 for receipt of an appropriate payment under the Help to Buy scheme in the overall amount of €5,416.
6. On 7 October 2020, the “qualifying contractor” involved in the development of the qualifying residence verified the claim of the Appellant and his spouse in accordance with section 477C(13) of the TCA 1997.
7. On 9 October 2020, a payment in the amount of €5,416 was made to the qualifying contractor in accordance with the Help to Buy scheme.
8. On 11 November 2020, the Appellant filed an ST21 stamp duty return with the Respondent. In this return, the Appellant stated that he and his spouse became the owners of the qualifying residence on 13 October 2020. In email correspondence dated

14 October 2020, submitted as part of the appeal papers, [REDACTED] of [REDACTED] [REDACTED] Auctioneers informed the Appellant's spouse that, the purchase having been completed, the keys to the qualifying residence could be collected at any stage that day before 5.30pm.

9. On 10 October 2023, the Appellant filed an ST21 stamp duty return with the Respondent. This recorded the qualifying residence as having been sold by the Appellant and his spouse on 4 October 2023. In email correspondence dated 3 October 2023, the Appellant informed his solicitor that as of that date the qualifying residence was vacant and was no longer occupied by him or his spouse.
10. On 28 November 2024, the Respondent sent correspondence to the Appellant indicating that it was commencing a compliance intervention relating to whether he was required to repay a portion of the appropriate payment previously paid to him, in accordance with the 'clawback' provision prescribed by section 477C(17)(b) of the TCA 1997. It is helpful to state at this point of the Determination that this subsection makes provision for the clawback of an appropriate payment, or part thereof, where a qualifying residence ceases to be occupied by a recipient of Help to Buy relief within 5 years of their commencing occupancy. Different clawback rates apply depending on when within this period a qualifying residence ceases to be occupied. These rates range from the full amount where a qualifying residence is no longer occupied "within the first year from occupation", to 20 per cent where a qualifying residence ceases to be occupied "within the fifth year from occupation". Of particular relevance to this appeal are the clawback rates of 60 per cent applicable to the cessation of occupancy within the third year from the beginning of occupation and 40 per cent within the fourth such year.
11. On 18 December 2024, the Appellant sent correspondence to the Respondent in relation to the subject matter of the compliance check. In this correspondence, the Appellant indicated that he and his spouse had occupied the qualifying residence from October 2020 until October 2023. He then stated:-

*"While I acknowledge the terms of the Help to Buy scheme, I feel it is unfair that we must repay part of the refund under these circumstances. The sale was driven by the need for more space as our family of four outgrew the two-bedroom home. Despite consistently paying substantial taxes, this repayment condition imposes additional financial strain, particularly as we immediately reinvested in a new home in December 2023."*

12. On 29 January 2025, the Respondent issued an assessment under section 477C(20) of the TCA 1997 to the Appellant. Pursuant to this, the Respondent assessed the Appellant

as having a liability of €3,519.03, this sum reflecting the clawback percentage applicable where a Help to Buy claimant has ceased to occupy their qualifying residence “within the third year from occupation”.

13. By Notice of Appeal dated 29 January 2025, the Appellant appealed the assessment of the Respondent to the Commission. In the Notice of Appeal, the Appellant stated:-

*“Revenue has determined that we must repay 60% of the HTB amount received; however, I respectfully disagree with this calculation and request that the repayment be adjusted to 40%, based on the following:*

*The HTB payment was issued on 09 October 2020.*

*The property was sold on 04 October 2023.*

*This means the property was owned and occupied for 2 years, 11 months, and 25 days—just five days short of fully completing the third year. Given the clear intent of the scheme's time-based repayment structure, I believe that applying the 60% rate instead of 40% due to a minor five-day difference is an overly rigid interpretation of the rules.*

*While I fully recognize the legal obligations under the Help-to-Buy scheme, I find the requirement to repay a pro-rata portion of the refund under these circumstances unfair. The decision to sell the property was not taken lightly; as a family of four, we needed to relocate to a larger home due to space constraints in our previous two-bedroom house.*

*[...]*

*I respectfully request that the Appeal Commissioners review this case and consider an adjustment to 40% repayment, reflecting a more reasonable and proportional approach.”*

14. Following the delivery by the parties of their respective Statements of Case, in which the Appellant re-iterated his contention that the application of a clawback rate of 60 per cent was inequitable in the circumstances, the matter was listed for hearing in accordance with the wishes of the parties. This hearing occurred on 2 July 2025.

### **Legislation and Guidelines**

15. Section 477C of the TCA 1997 makes provision for the Help to Buy scheme, the purpose of which is to assist first-time buyers in the purchase of certain types of property constituting their sole or main residence. The scheme works by allowing first-time buyers

a refund, referred to as an “appropriate payment”, of income tax and DIRT they have paid in the State in the four tax years prior to making an application under the scheme.

16. Section 477C(17) of the TCA 1997 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.”*

17. Under section 477C(20) of the TCA 1997:-

*“(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**

### ***Appellant***

18. In legal submission, the Appellant did not dispute that the meaning of section 477C(17)(b) of the TCA 1997 was that, if he and his spouse ceased to occupy the qualifying residence within three years of beginning to occupy it, but after two years from that date, they would be liable to repay to the Respondent 60 per cent of the appropriate payment that they had received. The Appellant accepted that he and his spouse had ceased to occupy the qualifying residence within this period. However, he submitted that they had been only a matter of days short of occupying the qualifying residence for in excess of three years. He and his spouse had decided to move to a new residence that, unlike the qualifying residence, could accommodate them and their two young children. This was the “full context” in which the decision to cease occupancy had occurred and it was, in his submission, incumbent on the Respondent to take this into account in deciding the correct

rate. Furthermore, and relatedly, the imposition of the 60 per cent clawback rate represented a heavy financial burden for their family, which was in his view unfair and inequitable. He submitted that the correct rate that the Respondent should have applied was 40 per cent and that this should be reflected in the determination of the matter by the Appeal Commissioner.

### *Respondent*

19. The Respondent submitted that the meaning of section 477C(17)(b) of the TCA 1997 was clear. If the Appellant ceased occupancy of the qualifying residence in the period between 2 and 3 years of having begun occupancy, 60 per cent of the appropriate payment previously received had to be repaid. In this regard, the Respondent pointed out that under section 477C(17)(b)(i), the onus falls on the recipient of an appropriate payment to notify the Respondent of the cessation of occupancy and prescribes that they “*shall*” pay clawback amounts at the rates enumerated at 477C(17)(b)(ii)(I)-(V) within three months. Use of the word “*shall*” in the legislation means that the rates set out therein are mandatory and the legislation does not provide for context of the kind referred to by the Appellant in submission to be taken into account. In support of this submission, the Respondent referred to the previous Determination of another Appeal Commissioner of the Commission, namely 157TACD2023, where a finding to this effect was made.

### **Material Facts**

20. The facts material to the determination of this appeal are as follows:-

- on 7 October 2020, the Appellant and his spouse made their claim under section 477C(3) of the TCA 1997 for receipt of an appropriate payment under the Help to Buy scheme in the overall amount of €5,416;
- on 9 October 2020, the Appellant and his spouse received the appropriate payment in the overall amount of €5,416;
- on 11 November 2020, the Appellant filed an ST21 stamp duty return with the Respondent which stated the date of the conveyance of the qualifying residence to him and his spouse to be 13 October 2020;
- on 14 October 2020, the Appellant's spouse received email correspondence from an auctioneer to the effect that she could collect the keys to the qualifying residence that day;



- on 10 October 2023, the Appellant filed an ST21 stamp duty return with the Respondent that recorded the qualifying residence as having been sold by the Appellant and his spouse on 4 October 2023.
- on 3 October 2023, by Appellant sent email correspondence to his solicitor in which he stated that the qualifying residence was vacant and no longer occupied by him or his spouse.

## Analysis

21. The facts in this appeal were not in dispute. The Appellant and his spouse purchased the qualifying residence on 13 October 2020. Based on the email correspondence of 14 October 2020, referred to above and forming part of the papers supplied to the Appeal Commissioner, they did not begin their occupancy of it until at least 14 October 2020. On 4 October 2023, less than three years later, the Appellant and his spouse sold the qualifying residence. It is clear from the aforementioned email correspondence sent to their solicitor, that by at the latest 3 October 2023 they had ceased to occupy the qualifying residence in advance of the sale.
22. The focus of the submissions of the Appellant in this appeal was that while by the strict wording of section 477(17)(b) of the TCA 1997 60 per cent was the appropriate clawback rate in respect of the appropriate payment previously received, the context of the sale in 2023 had to be taken into consideration. The Appellant said that he and his spouse sold in order that they could acquire a new home sufficient to accommodate themselves and their two young children. Although in selling the qualifying residence and ceasing occupancy, they fell short of the period pursuant to which a clawback rate of 40 per cent would apply, they did so only by a small number of days. The application of the 60 per cent rate amounted to an unfair penalisation of them and was an “overly rigid” approach to the administration of the Help to Buy scheme.
23. It is necessary at this point to state that in exercising their function, an Appeal Commissioner of the Commission is bound to follow relevant legislation that has been passed by the Oireachtas and made into law. An Appeal Commissioner has no discretionary power to depart from or disapply legislation in individual cases, where specific circumstances are said to give rise to unfairness or hardship. That this is so as a matter of law is clear from the judgment of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18. There, the Court examined the scope of an Appeal Commissioner’s function in detail and held that, in the context of an appeal of an

assessment, their task was confined to quantifying the correct amount of tax owed, if any, by reference to the terms of legislation.

24. It is also necessary to state that the correct method of interpreting the meaning of legislation has been described in numerous judgments of the Superior Courts, including in *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Bookfinders v Revenue Commissioners* [2020] IESC 60 and *Perrigo Pharma International DAC v McNamara & Ors* [2020] IEHC 152. This method involves, in the first instance, the adoption of the plain and ordinary meaning of the wording used in the relevant legislation.
25. The meaning of section 477C(17)(b) of the TCA 1997 could not in the Appeal Commissioner's view be clearer. If a qualifying residence in respect of which a person or persons have received an appropriate payment ceases to be occupied by them as their primary residence within a period of three years from the beginning of their occupancy, but after a period of two years, then the person or persons in question must repay 60 per cent of the appropriate payment received. There is no provision for 'substantial completion' of a period covering a particular clawback rate, or discretion conferred by the legislation on either the Respondent or an Appeal Commissioner to disapply or disregard the enumerated rates in the interests of fairness or equity. On the contrary, the use of the wording "shall notify the Revenue Commissioners...and pay to the Revenue Commissioners" [emphasis added] in section 477C(17)(b)(i) indicates that repayment, and assessment by the Respondent where no voluntary repayment is forthcoming, is mandatory. In this regard, the Appeal Commissioner is in full agreement with the findings of his colleague in the Determination 157TACD2023, which was cited by the Respondent in legal submission.
26. This being so, it is not within the power of the Appeal Commissioner to take into account the context in which the Appellant and his spouse came to cease their occupancy of the qualifying residence, as the Appellant suggested in legal submission that he should do. Rather, it is essential for the Appeal Commissioner to adhere to the rates set out in subsection 17(b)(ii) of section 477C of the TCA 1997. As noted already, the appropriate rate having regard to the factual timeline agreed by the parties is 60 per cent, which rate was applied by the Respondent in the assessment under appeal, leading to the assessed sum of €3,519.03. The Appeal Commissioner finds this to be the correct amount and therefore finds that the assessment of 29 January 2025 that is under appeal is to stand.

## Determination

27. The Appeal Commissioner finds in this appeal that the Appellant's correct charge to tax, arising from his obligation to repay 60 per cent of an appropriate payment previously received under the Help to Buy scheme, is €3,519.03. In accordance with this finding, the Appeal Commissioner determines that the assessment of 29 January 2025 that is under appeal, made by the Respondent under section 477C(20) of the TCA 1997, is to stand.
28. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

## Notification

29. 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

30. 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.



Conor O'Higgins  
Appeal Commissioner  
10 July 2025