



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

220TACD2025

Between



**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## **Contents**

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	4
Submissions .....	6
Appellant's Submissions.....	6
Respondent's Submissions .....	8
Material Facts .....	9
Analysis .....	10
Determination .....	12
Notification .....	12
Appeal .....	13

## **Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against the decision of the Revenue Commissioners (hereinafter the "Respondent") dated 13 February 2025 to clawback 60% of the Help-to-Buy relief which the Appellant had previously been approved for and received pursuant to section 477C of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997").
2. The total amount under appeal is €13,560.00.

## **Background**

3. [REDACTED] (hereinafter the "Appellant") is a Pay As You Earn taxpayer who is jointly assessed to tax with his wife, [REDACTED].
4. On 28 June 2022, the Appellant and his wife, as first-time property purchasers, submitted an application to the Respondent for Help-to-Buy relief pursuant to the provisions of section 477C of the TCA 1997 in relation to the property at [REDACTED] [REDACTED] (hereinafter the "Property").
5. On 16 September 2022, the Appellant and his wife initiated a Help-to-Buy claim pursuant to the provisions of section 477C of the TCA 1997 in relation to the purchase of the Property in the amount of €22,600, that being 10% of the purchase price of the Property.
6. On 19 September 2022, the property developer building the Property verified the claim and a payment of €22,600 subsequently issued from the Respondent to the property developer.
7. The Appellant and his wife sold the Property in December 2024 and on 2 December 2024 a Stamp Duty Return ST21 form relating to the sale of the Property by the Appellant and his wife was filed with the Respondent which recorded the sale and transfer of the Property on 2 December 2024.
8. Contemporaneous to selling the Property, the Appellant and his wife purchased another property at [REDACTED], in the same development as the Property.
9. On 5 January 2025, the Appellant wrote to the Respondent to inform them of the sale of the Property as a result of which correspondence, the Respondent commenced a compliance review of the Appellant's Help-to-Buy claim.

10. On 13 February 2025, the Respondent wrote to the Appellant informing him that, in accordance with the provisions of 477C(20) of the TCA 1997, he had been assessed to a clawback of tax of €13,560.
11. The Appellant submitted a Notice of Appeal to the Commission on 23 February 2025.
12. The oral hearing of this appeal took place remotely on 28 July 2025.

### **Legislation and Guidelines**

13. The legislation relevant to this appeal is as follows:

Section 477C of the TCA 1997 – Help to Buy (as in force from 1 January 2022 to 21 December 2022)

“(1) *In this section—*

...

*“first-time purchaser” means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;*

...

*“qualifying contractor” has the meaning assigned to it by subsection (2);*

...

*“qualifying period” means the period commencing on 19 July 2016 and ending on 31 December 2022;*

*“qualifying residence” means –*

*(a) a new building which was not, at any time, used, or suitable for use as a dwelling, or*

*(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,*

*and-*

*(i) which is occupied as the sole or main residence of a first time purchaser,*

*(ii) in respect of which the construction work is subject to the rate of tax specified in section 46(1)(c) of the Value Added Tax Consolidation Act 2010, and*

*(iii) where the purchase value is not greater than –*

- (I) *where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection 3(a) is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in subsection (3) (b) is drawn down by a claimant, €600,000 or*
- (II) *in all other cases €500,000.*

...

(3) *Where an individual has, in the qualifying period, either—*

*(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or*

*(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,*

*that individual may make a claim for an appropriate payment.*

...

(17) *(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)—*

...

*(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,*

...

(21) *An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days of the notice of that decision."*

## **Submissions**

### *Appellant's Submissions*

14. The Appellant submitted the following ground of appeal in his Notice of Appeal:

*"We are appealing section 477C(17) of the Taxes Consolidation Act, 1997, more specifically the clawback provision of 60% in the sum of 13,560 (euro) as per your letter dated 13February 2025.*

*The purpose of the appeal is due to the housing crisis which Ireland is currently facing. Back in 2022, we were informed by our landlord that we have to vacate our rented property which ultimately pushed us to look into purchasing our first family home. As you know, there was a finite amount of property in the market and we managed to secure the last property in [REDACTED]. We knew that the property did not fit our family needs, but since it was the last property we proceeded to purchase it. We also didn't know there will be further developments in the housing estate and did not want to risk loosing out of the last property ([REDACTED]).*

*We noticed that there were more houses being built in [REDACTED] and we contacted the estate agent regarding one of the houses. We were informed of the expansion in the housing estate which prompted us to reassessing our finances and explore the possibility of purchasing a property in [REDACTED] which fit our family needs. We*

*decided to apply to purchase the property we are currently living in and were lucky to secure the house which suited our family needs.*

*We want to emphasise that it was not our intention to sell [REDACTED] within the first 5-years of purchasing the property as we thought it was our family home and we would not find or would be able to purchase a different property that fit our family needs due to the current housing crisis.*

*As such, we would be grateful if you could kindly reassess the decision and waive the clawback of 60% in the sum of 13,560.”*

15. The Appellant submitted the following in his Statement of Case:

*“Prior to purchasing [REDACTED] (“the Property”) we were renting a property in [REDACTED]. We were trying for numerous years to purchase a property in [REDACTED] but as you may know there was and is a shortage of property in [REDACTED] and we had limited means to purchase a property back then without the assistance of the Help to Buy Scheme (“the Scheme”). We continued to search for properties and one day decided to call the estate agents and were informed that there was one property left in [REDACTED] which was [REDACTED] (“the property”). It also transpired our landlord had also plans from the property. Therefore, we made the decision to purchase the property even though we knew that the property did not suit our family needs. There were limited properties in the market which we would have been eligible to purchase without the Scheme, but those properties also did not suit our family needs.*

*We would like to emphasise that we would not have been able to purchase the property without the Scheme. We were unaware of any future developments in [REDACTED]. After a year of living in the property we found out that there was a third phase development in [REDACTED] and we enquired about the properties and found out that [REDACTED] (“the current Property”) was available which was bigger and suited our family needs. We enquired with the bank about our mortgage and found out that we were eligible to purchase the current property if we sold the property.*

*When we were purchasing the current property we were advised by our solicitors that we need to repay the scheme since we did not live in the property for five years. Therefore, we immediately informed the Revenue once we moved to the current property about the scheme and decided to appeal the clawback.*

*Our intentions were to remain in the property as we thought there will be no more developments in the estate and that we would not have the opportunity to purchase a property that suited our family needs. The purpose of the relocation was not motivated financially, we purchase the current property as it suited our family needs and we do not intent on relocating again.”*

16. At the oral hearing, the Appellant submitted that, whilst he accepts the provisions of section 477C of the TCA 1997, his situation differs from that of other taxpayers who have sold their properties within 5 years of receiving payment under the Help-to-Buy scheme. This, he submitted, is on the basis that:
  - 16.1. The housing crisis had made getting a house very difficult, whether to purchase or rent;
  - 16.2. When the Property was purchased, he and his wife had been made aware by their previous landlord that they would have to vacate the house which they had been renting;
  - 16.3. The Property was the only house available to purchase at that time and was the final available house in the development;
  - 16.4. As the Property was the only available house to purchase, the Appellant and his wife purchased the Property knowing that it was not suitable for their family needs;
  - 16.5. They bought the Property with the intention of remaining in it for in excess of 5 years;
  - 16.6. Subsequent to the purchase of the Property, another phase of the same development went on sale and the opportunity arose for the Appellant and wife to purchase a larger house which was more suitable to their family needs;
  - 16.7. They did not make a profit on selling the Property and all of the money from the sale of the property was used to fit out the new house which they purchased which came as a builder's finish;
  - 16.8. The same developer built both the Property and the new house which they purchased, in the same development.

#### *Respondent's Submissions*

17. The Respondent submitted that the provisions of section 477C(17)(a) require that a claimant for Help-to-Buy relief must occupy a residence for which Help-to-Buy relief is received for a period of five years.



18. The Respondent further submitted that the provisions of section 477C(17)(b) require that, if a person ceases to occupy a residence for which Help-to-Buy relief is received for a period of five years, then a repayment of a percentage of the amount of Help-to-Buy Relief by a claimant is required.
19. In the Appellant's circumstances, it was submitted that, as he ceased to occupy the Property during the third year, he is required to repay 60% of the amount of the €22,600.00 Help-to-Buy relief received, that is to say the Appellant is required to repay €13,560.00.

### **Material Facts**

20. The material facts are not in dispute in this appeal and the Commissioner accepts same as material facts:
  - 20.1. The Appellant is a Pay As You Earn taxpayer who is jointly assessed to tax with his wife.
  - 20.2. On 28 June 2022, the Appellant and his wife, as first-time property purchasers, submitted an application to the Respondent for Help-to-Buy relief pursuant to the provisions of section 477C of the TCA 1997 in relation to the Property.
  - 20.3. On 16 September 2022, the Appellant and his wife initiated a Help-to-Buy claim pursuant to the provisions of section 477C of the TCA 1997 in relation to the purchase of the Property in the amount of €22,600 that being 10% of the purchase price of the Property.
  - 20.4. On 19 September 2022, the property developer building the Property verified the claim and a payment of €22,600 subsequently issued from the Respondent to the property developer.
  - 20.5. The Appellant and his wife sold the Property in December 2024 and on 2 December 2024 a Stamp Duty Return ST21 form relating to the sale of the Property by the Appellant and his wife was filed with the Respondent which recorded the sale and transfer of the Property on 2 December 2024.
  - 20.6. Contemporaneous to selling the Property, the Appellant and his wife purchased another property at [REDACTED], in the same development as the Property.

- 20.7. On 5 January 2025, the Appellant wrote to the Respondent to inform them of the sale of the Property as a result of which correspondence, the Respondent commenced a compliance review of the Appellant's Help-to-Buy claim.
- 20.8. On 13 February 2025, the Respondent wrote to the Appellant informing him that, in accordance with the provisions of 477C(20) of the TCA 1997, he had been assessed to a clawback of tax of €13,560.
- 20.9. The Appellant submitted a Notice of Appeal to the Commission on 23 February 2025.

### **Analysis**

21. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

22. There is no dispute between the Parties that the Appellant correctly received an appropriate payment under the provisions of section 477C of the TCA 1997 in relation to the Property and that he was entitled to receive the payment under the Help-to-Buy scheme.
23. There is also no dispute between the Parties that the Appellant and his wife both remained in occupation of the Property as their main residence for a period of in excess of 2 years but less than 3 years.
24. There is further no dispute between the Parties that the Appellant and his wife sold the Property in December 2024.
25. Section 477C(17)(a) of the TCA 1997 provides that:

*“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.”*

26. Section 477C(17)(b) of the TCA 1997 provides that:

*“(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)—*

*...*

*(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,*

*...”*

27. Section 477C(17)(b)(i) of the TCA 1997 provides that, in circumstances where the Appellant and his wife ceased to reside in the Property within the third year from occupation, he “*shall*” notify the Respondent. It is accepted, and the Commissioner has found as a material fact, that the Appellant complied with his obligation to notify the Respondent of the sale of the Property.
28. In addition, section 477C(17)(b)(ii)(III) of the TCA 1997 provides that the Appellant has ceased occupation of the Property within the third year from occupation, he “*shall*”, within 3 months from ceasing to reside in the Property, pay to the Respondent an amount equal to 60% of the amount of the appropriate payment.
29. The use of the word “*shall*” as set out in sections 477C(17)(b)(i) and 477C(17)(b)(ii)(III) of the TCA 1997, indicates an absence of discretion in the application of these provisions. The wording of these provisions does not provide for extenuating circumstances in which the amount of repayment as specified in section 477C(17)(b)(ii)(III) of the TCA 1997 may be reduced.
30. The Commissioner has no authority or discretion to direct that the amount of repayment as specified in section 477C(17)(b)(ii)(III) of the TCA 1997 may be reduced or relieved.
31. Therefore, it follows that, in compliance with the provisions of section 477C(17)(b) of the TCA 1997, the Appellant must repay the amount of €13,560.00 to the Respondent, that

being 60% of the €22,600.00 in Help-to-Buy relief which was paid by the Respondent in relation to the Property.

### **Determination**

32. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner determines that the Appellant has not succeeded in establishing that the Respondent was incorrect in determining that the provisions of section 477C(17)(b)(ii)(III) of the TCA 1997 required that the Appellant should repay an amount equal to 60% of the Help-to-Buy relief received in relation to the Property.
33. The Commissioner determines that the Appellant should repay the amount of €13,560.00 to the Respondent, that being 60% of the €22,600.00 in Help-to-Buy relief which was paid by the Respondent in relation to the Property.
34. Therefore, the Commissioner determines that, the Respondent's decision of 13 February 2025 shall stand.
35. This is an unfortunate situation and it is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.
36. The Commissioner appreciates and acknowledges the helpful, courteous and precise manner in which both the Appellant and Respondent conducted this appeal.
37. This Appeal is determined in accordance with Part 40A of the TCA 1997 in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

38. 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**

39. 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.



Clare O'Driscoll  
Appeal Commissioner  
5 August 2025