AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

13TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This determination concerns an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against an assessment raised by the Revenue Commissioners ("the Respondent") in the amount of €8,000.

2. The assessment under appeal relates to a clawback equal to 40% of the Help-to-Buy ("HTB") relief granted to the Appellant and his spouse. The Appellant contends that the correct clawback is 20% of the relief granted.

3. The appeal proceeded by way of a remote hearing held in private.

Background

4. HTB relief assists taxpayers in funding the purchase of their first home or, in the case of self-builds, their construction. Where there is more than one claimant, each individual must be a first-time buyer.

5. The relief provides for a refund of income tax and deposit interest retention tax paid by the claimant(s) in respect of the four tax years immediately prior to the year in which an application for HTB relief is made. Statutory limits apply to the maximum amount of HTB relief available to a claimant or claimants, but these are not in issue in the present case.

6. A clawback of HTB relief arises where the claimant ceases to occupy the property within five years from the date of occupation. Where there is more than one claimant, a clawback arises where all the claimants cease to occupy the property.

7. In the present case, the Appellant and his spouse are jointly assessed for income tax purposes.

8. On 4 February 2019, as first-time property purchasers, they submitted an application to the Respondent for HTB relief.

9. On 19 June 2019, the Appellant and his spouse initiated a claim for HTB relief in relation to the purchase of [redacted] ("the Subject Property") in the amount of €20,000, being 4% of the purchase price of that property. The Respondent approved the claim and remitted €20,000 to the developer of the Subject Property.

10. Following completion of the Subject Property, the Appellant and his spouse commenced occupation on 19 March 2021.

11. The Appellant and his spouse sold the Subject Property in March 2025 and vacated it on 7 March 2025.

12. On 24 March 2025, the Appellant informed the Respondent of the sale of the Subject Property.

13. By correspondence dated 12 June 2025, the Respondent notified the Appellant that, in accordance with section 477C(20) the Taxes Consolidation Act, 1997, as amended ("the TCA 1997"), he had been assessed to a clawback of HTB relief in the sum of €8,000, being 40% of the relief granted.

14. The Appellant appealed to the Commission later that day.

15. The Appellant submitted a notice of appeal and accompanying documentation in support of his appeal. In addition, the Appellant submitted a statement of case, and the Respondent submitted a statement of case.

Legislation and Guidance

Legislation

16. The legislation relevant to the substantive issue in this appeal is set out below.

17. Section 477C(17) of the TCA 1997 provides, among other things, as follows:

> *"(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 Respondent] and, in accordance with subparagraph (ii), pay to [the Respondent] 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) …

(II) …

(III) …

(IV) within the fourth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to [the Respondent] 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 Respondent] an amount equal to 20 per cent of the amount of the appropriate payment."

18. Section 1 of the Interpretation Act 2005 provides, among other things, as follows:

"(1) …

(2) This Act comes into operation on 1 January 2006."

19. Section 2 of the Interpretation Act 2005 provides, among other things, as follows:

"(1) In this Act -

'Act' means -

(a) an Act of the Oireachtas, and

(b) a statute which was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and which continued in force by virtue of Article 50 of the Constitution;

'enactment' means an Act or a statutory instrument or any portion of an Act or statutory instrument;

'repeal' includes revoke, rescind, abrogate or cancel;

'statutory instrument' means an order, regulation, rule, bye-law, warrant, licence, certificate, direction, notice, guideline or other like document made, issued, granted or otherwise created by or under an Act and references, in relation to a statutory instrument, to 'made' or to 'made under' include

references to made, issued, granted or otherwise created by or under such instrument.

[…]"

20. Section 4 of the Interpretation Act 2005 provides, among other things, as follows:

"(1) A provision of this Act applies to an enactment except in so far as the contrary intention appears in this Act, in the enactment itself or, where relevant, in the Act under which the enactment is made.

[…]"

21. Section 21 of the Interpretation Act 2005 provides, among other things, as follows:

"(1) In an enactment, a word or expression to which a particular meaning, construction or effect is assigned in Part 1 of the Schedule has the meaning, construction or effect so assigned to it.

[…]"

22. Part 1 of the Schedule (Interpretation of Particular Words and Expressions) to the Interpretation Act 2005 states, among other things, that:

"'year', when used without qualification, means a period of 12 months beginning on the 1st day of January in any year."

The Respondent's published guidance

23. Extracts from part 15-01-46 of the Respondent's published tax and duty manual are as follows:

"This document should be read in conjunction with section 477C of [the TCA 1997].

Document last updated December 2024.

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.
…

15. Clawbacks

In certain circumstances, there will be a clawback of all or part of the HTB payment.

15.1. Clawback from the claimant(s)

Minimum period of occupation

On completion, a qualifying residence must be occupied for a minimum period of 5 years by the first-time buyer as his or her only or main residence, otherwise the HTB payment will have to be repaid to [the Respondent]. Where more than one first-time buyer is a party to the claim for HTB, no clawback will apply where at least one of the purchasers continues to occupy the residence for the minimum period of 5 years.

Where occupation ceases within the 5-year period, the HTB claimant(s) is required to notify [the Respondent] accordingly.

Example 15.1

Sheila and Suzanne received a HTB payment. Their house was completed by the builder in August 2017 and they moved in immediately. In February 2020, both Sheila and Suzanne decide to go abroad for 3 years and rent out their house. As the 5-year minimum occupation test is not satisfied, the HTB payment will have to be repaid in part to [the Respondent] (see paragraph 15.2 below). Sheila or Suzanne must notify [the Respondent] when they cease to occupy the house.

Example 15.2

Mary, Jane and Elizabeth received a HTB payment. Their house was completed by the builder in September 2017 and they moved in immediately. In April 2019, Mary and Jane decide to move out and purchase a new property. Elizabeth continued to live at the property for the required 5 years. In this case, there will be no clawback of HTB from any of the parties.

15.2. Repaying HTB to [the Respondent]

The HTB payment must be repaid in full or in part to [the Respondent] within three months from the date the residence ceases to be occupied by the applicant(s). The rate of clawback depends on the year in which the residence ceases to be occupied, as follows:

Year Occupation Ceases	***Rate of clawback of HTB payment***
1	*100%*
2	*80%*
3	*60%*
4	*40%*
5	*20%*

Example 15.3

Brendan received a HTB payment of €15,000. The house was completed by the builder in September 2017 and he moved in immediately. In November 2020, he ceased to occupy the house and sold it. He notified [the Respondent] accordingly. As Brendan ceased to occupy the house in year 4, there is a clawback of the HTB as follows:

€15,000 X 40% = €6,000

15.3. Temporary relocation for work during the 5-year clawback period

Where occupation ceases temporarily within the 5-year period due to relocation for the HTB claimant's job, [the Respondent] is prepared to accept that a clawback does not arise provided the following criteria are met:

- *The relocation is required by the claimant's job and evidence to that effect is provided by the employer concerned,*
- *The claimant does not purchase another property to reside in,*
- *The claimant returns to live in the HTB property as his or her main residence upon completion of the work assignment.*
- *The property must still be physically occupied by the claimant for 5 years in total.*

The total occupancy, from the date of first occupation of the house, must be at least 5 years in total, without taking the period spent away due to a work assignment into account. Therefore, the periods of occupation before and after the relocation period combined must amount to 5 years.

Example 15.4

In January 2020, Hugh moved into a new house on which he had received a HTB payment. In January 2022, he was required by his employer to relocate temporarily. He returned in July 2022 and moved back into his house. In order to avoid a clawback of the HTB relief, Hugh will have to occupy his house until July 2025 i.e., 5 years and 6 months from the date of first occupation of the house.

[…]" (Emphasis in original)

Evidence and Submissions

Appellant's oral evidence

24. The Appellant gave sworn oral testimony on factual matters at the hearing.

25. The oral evidence given by the Appellant was consistent with the information contained in his notice of appeal and statement of case, extracts of which are reproduced below.

Appellant's submissions

26. The Appellant's notice of appeal and statement of case contained similar information, with the statement of case providing additional detail. For brevity, the Commissioner has included only an extract of the Appellant's submissions contained in the statement of case.

27. In his statement of case, the Appellant submitted, among other things, as follows:

    "I contacted [the Respondent] in March 2025 following the successful sale of my home. I knew I had vacated, for personal reasons, my property before the full 5 year period and I would have to pay back a portion of the help to buy grant I originally received in 2019, I believed this five year period to end in March 2026. I occupied the apartment on March 19th 2021 and vacated the apartment on March 7th 2025.

    At the time of our sale there was no pressure of for timing from us as seller or the buyer. My wife and I had purchased a new build house in [redacted]*, This house was only completed in June 2025 and we were living with family in the interim period. The buyer had an existing property and did not occupy the apartment in March 2025.*

    In preparation for the sale, and as part of agreeing a move out date, I consulted the [the Respondent's] guidance Part 15-01-46 for details of the clawback mechanism that would apply to our help to buy scheme.

    The guidance noted that the clawback would be enforced should The property must be occupied by the first-time buyer, or at least one of the first-time buyers in the case of multiple first-time buyers, for a period of five years from the date of occupation.

    In this guidance there are 4 examples of clawbacks being applied. In all four examples the only details given are month of occupation and month of cessation, not one of the examples list the date of either event. Upon reading this guidance it was evident to me that the assessment would be undertaken for what constitutes a year of occupation as being month of occupation to month of cessation of occupation. Three of the examples *have a clear gap in the month of occupation and month of sale, and I agree there might not be clarity as to how the calculation would apply, however Example 15.4 gave me a clear understanding of the calculation. You cannot read example 15.4 and understand there to be a day count of the calculation, it only holds true if the calculation of a 'year' is counted as 6 separate calendar months.*

The example 15.4 states:

In January 2020, Hugh moved into a new house on which he had received a HTB payment. In January 2022, he was required by his employer to relocate temporarily. He returned in July 2022 and moved back into his house. In order to avoid a claw back of the HTB relief, Hugh will have to occupy his house until July 2025 i.e., 5 years and 6 months from the date of first occupation of the house.

In this example all it states that Hugh will have to occupy his house until July 2025, there is no mention of a date. It also doesn't say 'until at least July 2025.'. It simply says that to avoid a clawback of the HTB relief Hugh only has to occupy his house until July 2025. As I demonstrate below this, using the calculation [the Respondent has] applied to my case, this is factually incorrect and the guidance is at a very minimum misleading.

In this example if Hugh occupied his house on 31 January 2020 vacated his house for his relocation on 1 January 2022 and didn't return until 31 July 2022, according to the process [the Respondent applies] he wouldn't be satisfying his 5th year in his house until the 3rd of September 2025.

To give a less extreme example if Hugh occupied his house on 15 January 2020 vacated his house for his relocation on 1 January 2022 and didn't return until 30 July 2022, according to the process [the Respondent applies] he wouldn't be satisfying his 5th year in his house until the 15th August.

Despite this [the Respondent's] guidance clearly states that Hugh only has to occupy his house until July 2025. It does not include a day count it says 6 months which is calculated by counting February, March, April, May, June & July.

To me this clearly shows that [the Respondent's] guidance isn't taking dates into account and easily gives the reader the intention of the calculation would be based on months.

We therefore fully based the decision around the finalisation of our sale on it being acceptable during the entire month of March 2025, with the ending of February 2025 *consisting of the finalisation of our 4th year of occupation. For a crude calculation this is what we believed was the basis of [the Respondent's] calculation as per the published guidance. This would result in us having to pay back EUR 4,000.*

Mar-21 Feb-22 Year 1

Mar-22 Feb-23 Year 2

Mar-23 Feb-24 Year 3

Mar-24 Feb-25 Year 4

Mar-25 Feb-26 Year 5 (Year we sold)

After 2 months of chasing [the Respondent] for a response on how the payment is made we received notification of a verification check and provided details to answer their requests. It was during the course of providing this information that [the Respondent] indicated that they would be basing this calculation on exact date of occupation despite no dates being given in the guidance for the clawback.

The reason I am appealing this notice of assessment is that the guidance [the Respondent] published is unclear and leaves significant ambiguity in how the claw back could be calculated. Had the guidance been clear that the assessment was based on the occupation date we would have easily waited 11 days to complete the sale, however the guidance published by [the Respondent] was not clear on this aspect and caused us to believe we had already crossed the requirement to be in year 5.

So in summation my contention is the guidance isn't clear and is confusing to the reader and leaves ambiguity in the calculation process that we are being penalised for. That our calculation is valid and we shouldn't be paying for a 2nd year of 'non – occupation'. I would note that in correspondence with [the Respondent] they stated that 'It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.' This is, in my view, an unsuitable view to take given there is no other legislation of [sic] guidance that gives detail on this calculation."

28. The Appellant's oral submissions were consistent with the information contained in his notice of appeal and statement of case.

Respondent's submissions

29. The Respondent's submissions are summarised in the paragraphs that follow, incorporating relevant extracts from the transcript of the hearing.

30. The Respondent submitted that the meaning of section 477C(17) of the TCA 1997 is clear.

31. In oral submissions, the Respondent submitted that a "*a year is 365 days*", in the context of section 477C(17) of the TCA 1997. The Respondent further submitted that a year "*starts from the date you move in and the date of year one finishes 365 days later. To do anything else would be giving an absurd meaning to the year …*"

32. In response to the Appellant's position regarding the Respondent's published guidance, in oral submissions, the Respondent submitted, among other things, as follows:

> *"… it is on the front of all our guidance that it is not a statutory interpretation. It is not professional advice and it should not be assumed that it is comprehensive and provides definitive answers in every case. We are giving guidance, we are giving broad outlines … And part of our guidance shows, gives rough sketches. So, if you move in, rough, this month and move out that month, you fall into one part of the legislation and then, if you move out this month, you fall into another part of the legislation.*
>
> *…*
>
> *it is guidance, it is general examples."*

Material Facts

33. Having considered the documentation submitted, and having heard the Appellant's evidence and the submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:

    33.1. The Appellant and his spouse are jointly assessed for income tax purposes and were so assessed at all times relevant to the matter in dispute.

    33.2. On 4 February 2019, the Appellant and his spouse, as first-time property purchasers, submitted an application to the Respondent for HTB relief.

    33.3. On 19 June 2019, the Appellant and his spouse initiated a claim for HTB relief in relation to the purchase of the Subject Property in the amount of €20,000, being 4% of the purchase price of that property.

    33.4. In or around July 2019, following correspondence between the Respondent and the developer of the Subject Property, the Respondent approved the claim and remitted €20,000 to the developer.

33.5. The Appellant and his spouse commenced occupation of the Subject Property on 19 March 2021.

33.6. The Appellant and his spouse sold the Subject Property in March 2025 and they both ceased to occupy it on 7 March 2025.

33.7. On 24 March 2025, the Appellant informed the Respondent that he and his spouse had sold the Subject Property.

33.8. By correspondence dated 12 June 2025, the Respondent notified the Appellant that, in accordance with section 477C(20) of the TCA 1997, he had been assessed to a clawback of HTB relief in the sum of €8,000, being 40% of the relief granted.

33.9. The Appellant appealed to the Commission later that day.

Analysis

Burden of proof

34. The burden of proof in this appeal rests on the Appellant, who must establish that the tax assessed should be reduced from €8,000 to €4,000, as he contends.

35. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners and Anor.* [2010] IEHC 49, Charleton J stated at paragraph 22, among other things, 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."*

36. Additionally, in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated, among other things, that:

> *"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. …*
>
> *98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; … Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears*

the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation. …"

37. This appeal concerns the correct interpretation of the legislation governing the HTB relief, and its application to the facts of this appeal.

38. The standard of proof applicable in this appeal is the balance of probabilities.

The Commissioner's jurisdiction

39. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. It is independent of the Respondent.

40. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

41. The Commission's jurisdiction was considered by the Court of Appeal in the case of *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"), in which Murray J stated at paragraph 20, among other things, that:

"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation."

42. The Commissioner refers further to *Lee*, wherein Murray J stated at paragraph 76:

"The jurisdiction of the Appeal Commissioners … under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933,934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility

that other provisions of [the TCA 1997] may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the Respondent has] acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

43. While *Lee* concerned assessments raised before the enactment of the Finance (Tax Appeals) Act 2015, and the statutory analysis was therefore based on the older legislation, Part 40 of the TCA 1997, the overarching analysis of Murray J is applicable to Part 40A of the TCA 1997.

44. It follows from the judgment in *Lee* that the Commissioner does not have jurisdiction to adjudicate upon, among other things, allegations of unfairness or any alleged breach of legitimate expectation in this appeal.

45. The Commissioner's role is confined to considering whether the assessment under appeal correctly charges the Appellant to tax in accordance with the provisions of section 477C of the TCA 1997.

Substantive issue

46. This appeal concerns a clawback of HTB relief granted to the Appellant and his spouse. While the parties agree that a clawback arises, they differ as to its quantum, which is determined by whether the Appellant and his spouse ceased to occupy the Subject Property within the fourth or fifth year from occupation. This constitutes the sole issue for determination.

47. The Appellant submits that a clawback of 20% of the relief applies, whereas the Respondent has determined it to be 40% and has assessed the Appellant on that basis.

48. Section 477C(17)(b)(i) of the TCA 1997 provides that, in circumstances where the Appellant and his spouse ceased to occupy in the Subject Property within five years from occupation, a clawback of HTB relief arises.

49. In accordance with section 477C(17)(b)(ii) of the TCA 1997, as they ceased to reside in the Subject Property within five years from occupation, the Appellant and his spouse were

obliged to notify the Respondent that this was the case. It is common ground that they complied with this requirement.

50. The quantum of the clawback of the HTB relief is determined in accordance with section 477C(17)(b)(ii) of the TCA 1997. A clawback of 40% arises where Appellant and his spouse ceased to occupy in the Subject Property "*within the fourth year from occupation*", whereas a clawback of 20% applies where they did so "*within the fifth year from occupation*".

51. The Appellant contends that, in determining a year from occupation, the appropriate measure is calendar months rather than individual days, with occupancy for any portion of a month constituting occupancy for the whole of that month.

52. In contrast, the Respondent maintains that a year from occupation is determined by reference to exact dates, with that period equating to 365 days.

53. The matter in dispute is resolved without going beyond the provisions of the Interpretation Act 2005, which apply to interpreting section 477C of the TCA 1997.

54. In accordance with section 21 of the Interpretation Act 2005 and Part 1 of the Schedule to that Act, "'*year', **when used without qualification**, means a period of 12 months beginning on the 1st day of January in any year.*" (Emphasis added)

55. Having regard to section 477C(17)(b)(ii) of the TCA 1997, the meaning of the word 'year' is qualified by the expression "*from occupation*". The effect of that qualification is that a year from occupation is a period of 12 months, determined by reference to exact dates.

56. Accordingly, the first year from occupation is a period of 12 months beginning on the first day of occupation, with each subsequent year commencing on the day after the preceding 12-month period ends.

57. The Commissioner found as a material finding of fact that the Appellant and his spouse commenced occupation of the Subject Property on 19 March 2021. Having regard to that date, the first five years from occupation are as follows:

Year From Occupation	**Start Date**	**End Date**
First	19 March 2021	18 March 2022
Second	19 March 2022	18 March 2023
Third	19 March 2023	18 March 2024
Fourth	19 March 2024	18 March 2025
Fifth	19 March 2025	18 March 2026

58. As the Commissioner found as a material finding of fact that the Appellant and his spouse both ceased to occupy the Subject Property on 7 March 2025, he is satisfied that they ceased to occupy it within the fourth year from occupation.

59. Section 477C(17)(b)(ii)(IV) of the TCA 1997 has mandatory effect and affords no discretion or exception by which the clawback of 40% could be mitigated, even where extenuating circumstances arise. This remains the position where a taxpayer has occupied the property for almost the entire fourth year from occupation, which is the situation in the present case.

60. Turning now to the Appellant's position regarding the Respondent's published guidance and correspondence exchanged between the parties.

61. The Appellant has contended that "*the guidance isn't clear and is confusing to the reader and leaves ambiguity in the calculation process … I would note that in correspondence with [the Respondent] they stated that 'It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.' This is, in my view, an unsuitable view to take given there is no other legislation of [sic] guidance that gives detail on this calculation.*"

62. Firstly, the Commissioner accepts and acknowledges that the Appellant acted in good faith and in line with his reading of the Respondent's published guidance.

63. The Respondent's published guidance does not have force of law. The relevant document makes its audience aware that it is guidance, noting on its cover page that it "*is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.*"

64. On its cover page, the document also states that it "*should be read in conjunction with section 477C of [the TCA 1997]*", the legislation governing HTB relief, including the clawback provisions.

65. While the examples referred to by the Appellant do not specify exact dates of occupation, it is noted that the guidance does not state that occupation of a property for any portion of a month constitutes occupation for the whole of that month.

66. As outlined above, the Commissioner does not have jurisdiction to adjudicate upon any alleged breach of legitimate expectation in this appeal. Accordingly, this determination

does not consider whether the Appellant had a legitimate expectation arising from the Respondent's guidance for the position he contends.

67. For the reasons set out above, the Commissioner does not agree that the position advanced by the Appellant conforms with the legislation.

68. In accordance with section 477C(17)(b)(ii)(IV) of the TCA 1997, a clawback equal to 40% of the HTB relief of €20,000 granted to the Appellant and his spouse arises, amounting to €8,000. Consequently, it follows that the appeal cannot succeed.

69. The Commissioner recognises that the Appellant's circumstances are unfortunate. However, the Commissioner's jurisdiction is limited to considering and applying tax law, and he has no equitable power or wider discretion to disapply statutory provisions.

Determination

70. Having considered the evidence adduced and all the documentation submitted by the parties, for the reasons set out above, the Commissioner determines that the Appellant has not shown that the tax assessed should be reduced from €8,000 to €4,000.

71. The Respondent's assessment in the sum of €8,000 shall stand.

72. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

73. The Commissioner recognises that this determination will be disappointing for the Appellant and is empathetic to the personal circumstances described on appeal. The Commissioner is, however, bound to apply the provisions of the legislation.

74. The Commissioner acknowledges and appreciates the professional and courteous manner in which both parties conducted this appeal.

Notification

75. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular sections 949AJ(5) and 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

76. 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 Walsh

Conor Walsh
Appeal Commissioner
9 January 2026