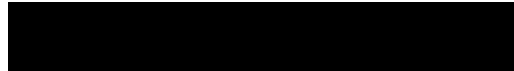




AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

68TACD2026

Between



Appellants

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	6
Submissions	12
<i>Appellants' submissions</i>	12
<i>Respondent's submissions</i>	17
Material Facts	20
Analysis	21
<i>Burden of proof in tax appeals</i>	21
<i>Principles of statutory interpretation</i>	22
<i>Section 83D of the SDCA 1999</i>	24
<i>Jurisdiction of an Appeal Commissioner</i>	27
<i>Conclusion</i>	28
Determination	29
Notification	29
Appeal	29

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by the Appellants, a married couple, in relation to a decision of the Revenue Commissioners (“the Respondent”) to refuse the Appellants’ claim for a repayment of stamp duty (“SD”) pursuant to section 83D of the Stamp Duties Consolidation Act 1999 (“the SDCA 1999”) on the basis that the claim did not comply with the statutory timeframe. The SD repayment claimed was in the amount of €7,700.
2. On 14 October 2025, the Appellants duly appealed to the Commission by submitting a Notice of Appeal. On 11 November 2025, the Appellants submitted a Statement of Case (“SoC”) which built on their Notice of Appeal. On 18 November 2025, the Respondent’s SoC was received by the Commission. On 9 December 2025, the Respondent submitted additional documentation to the Commission. The Commissioner has considered the submissions made by both parties and the relevant legislation in making this determination.
3. In accordance with the provisions of section 949U of the TCA 1997, and by agreement with both parties, this appeal is adjudicated without a hearing. The Appellants have indicated in their SoC that the information contained in this appeal is private. Hence this determination will be redacted for publication on the Commission’s website, pursuant to section 949AO of the TCA 1997.

Background

4. On [REDACTED], an instrument was executed whereby the Appellants purchased [REDACTED] hectares of land at the address [REDACTED] (“the Site”). On 7 June 2021, a SD return was filed on behalf of the Appellants declaring the consideration for the purchase of the Site as €140,000. SD at the non-residential rate of 7.5% was paid on the instrument and, on 8 June 2021, a SD certificate was issued by the Respondent accordingly. The SD liability arising was €10,500. On 6 October 2021, an amended SD return was filed on behalf of the Appellants which added the folio numbers for the land transferred to the Appellants, and an amended SD certificate was issued by the Respondent on the same date.
5. Pursuant to Commencement Notice number [REDACTED] submitted to the relevant local building control authority on [REDACTED] (“the Commencement Notice”), and acknowledged as valid by that authority on [REDACTED], construction of a residential dwelling commenced on the Site on [REDACTED]. Whilst a copy of the Commencement

Notice itself has not been submitted to the Commission, a copy of the local building control authority's acknowledgement of the Commencement Notice as valid, dated [REDACTED] [REDACTED] was submitted as part of the additional documentation received by the Commission from the Respondent on 9 December 2025.

6. On 19 August 2025, the Appellants lodged a SD repayment claim via the eRepayments facility on the Respondent's Revenue Online Service ("ROS") pursuant to section 83D of the SDCA 1999. Section 83D of the SDCA 1999, Repayment of stamp duty where land used for residential development, provides for a repayment of SD paid on an instrument in relation to land which is conveyed or transferred by the instrument in certain circumstances where construction operations, in relation to a residential development on the land, commence pursuant to a commencement notice within the period of thirty months following the date of execution of the instrument. The Appellants filed a completed SD repayment claim with the Respondent via the eRepayments system on ROS, which included additional documentation. In that additional documentation, the Appellants confirmed that construction operations commenced on the Site within thirty months of the date of execution of the instrument, as the Appellants had ticked the box accordingly in section 6(b) of the form entitled "*Declaration as required under Section 83D Stamp Duties Consolidation Act 1999 FOR A SINGLE DWELLING UNIT*" (emphasis in the original).
7. On 28 August 2025, the Respondent requested further information from the Appellants via the eRepayments facility on ROS. In that correspondence the Respondent stated:

"[...] I refer to your application and note the date of execution for the deed was [REDACTED] and the date of commencement was [REDACTED]. Per legislation, the date of commencement of construction must begin within 30 months of the date of execution. In order to further process this application, please advise the reason for the delay and provide supporting documentation. [...]"

8. On 1 September 2025, the Appellants submitted a letter to the Respondent via the eRepayments platform on ROS providing reasons for the delay in the commencement of construction on the Site. This letter stated:

"[...]"

1. COVID-19 Pandemic Restrictions

At the time of execution of the deed in [REDACTED], the Irish construction industry was still experiencing the direct effect of the [...] pandemic. [...].

2. Supply Chain Disruptions

During 2021 – 2023 there were severe disruptions in the availability of essential building materials [...]. These delays and cost escalation made it unfeasible to commence construction within the normal timeframe, despite ongoing commitment to proceed with the development.

3. Professional and Financial Delays

- *Lenders and insurers imposed stricter requirements during and after the pandemic, which extended lead-in periods for securing finance.*
- *Professional service providers (engineers, surveyors, contractors) faced backlogs in workload arising from the COVID shutdowns.*

4. Personal circumstances

Both [Appellants] are self-employed, we both suffered significant loss in revenue during the [...] pandemic. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Commitment to Development

I confirm that I have at all times intended to proceed with this dwelling. The [Commencement Notice] was formally lodged on [REDACTED] as soon as it became practicable to do so. The project aligns fully with the housing policy objectives of providing timely residential development.

6. Supporting Documentation

I am in a position to provide the following supporting documents if required:

- *Government announcements of construction site closures and phased reopening (2020 – 2021).*
- *Planning approval documentation and subsequent correspondence with statutory authorities.*
- *Confirmation of the closure of [...] my wife's business.*

7. Request for Consideration

In light of the above, I respectfully submit that the delay in commencement was caused solely by exceptional, national and global circumstances outside my control. I request

that the [Respondent] exercise discretion and allow the relief/refund application to proceed, in keeping with the spirit and intent of the legislation. [...]

[...]” (emphasis in the original)

9. On 3 October 2025, the Respondent issued correspondence to the Appellants via the eRepayments platform on ROS confirming its refusal of the claim for repayment of SD on the basis that construction operations had commenced outside the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999. In that correspondence, the Respondent stated:

“[...] Unfortunately the reasons outlined in your letter of 01/09/2025 do not fall under the delays set out by the legislation namely there being an appeal under section 7 of the Building Control Act 1990 or an order made by the court requiring that construction operations cease to be carried out. Section 83D(3)(a) sets out that stamp duty paid on an instrument may be repaid in accordance with this section in relation to the land if construction operations on the land commence pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument. Per the documentation you have submitted, construction did not commence within 30 months of the date of execution [REDACTED] of the instrument under [REDACTED]. As such, your claim for a repayment of Stamp Duty under the Residential Development Stamp Duty Refund Scheme has been rejected. S 83D(11)(b) provides that you may appeal to the Appeal Commissioners against this decision in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of this notification. [...]”

10. On 14 October 2025, the Appellants duly appealed to the Commission.

Legislation and Guidelines

11. Section 83D of the SDCA 1999, Repayment of stamp duty where land used for residential development, as amended and applicable to this appeal, provides:

“(1)

(a) *In this section –*

“appropriate part”, in relation to land, means the whole or, as the case may be, the part of the land to which the relevant residential development, the subject of a claim for repayment under this section, relates;

[...]

"commencement notice" means -

- (a) a commencement notice within the meaning of article 8, or
- (b) a 7 day notice (within the meaning of article 5 of the Regulations of 1997) required under article 20A of the Regulations of 1997,

that is acknowledged by a building control authority in accordance with article 10(2) or 20A(3), as the case may be, of those Regulations;

"construction operations", in relation to a residential development or relevant residential development, means the construction of buildings or structures including the preparatory operations of site clearance, drainage, earth-moving, excavation, laying of foundations and the provision of roadways and other access works;

"dwelling unit" means -

- (a) a building or part of a building used or suitable for use as a dwelling, and
- (b) the curtilage of the dwelling, up to an area (exclusive of the site of the dwelling unit) of 0.4047 hectares;

[...]

"land", where used without qualification, means the land that is conveyed or transferred by an instrument;

[...]

"Regulations of 1997" means the Building Control Regulations 1997 (S.I. No. 496 of 1997);

"residential development" means the construction of one or more dwelling units and references to "relevant residential development" shall be construed in accordance with paragraph (b).

- (b) References in this section to "relevant residential development" shall be construed –

(i) *in a case in which a claim for a repayment under subsection (8) is, pursuant to subsection (7)(b), made in respect of such of the construction operations as for the time being are being carried out pursuant to a particular commencement notice, as references to the residential development that comprises those construction operations, or*

(ii) *in either –*

(I) *a case in which, as mentioned in subsection 7(b), the making of a claim for repayment under subsection (8) is deferred until completion of the residential development concerned, or*

(II) *a case in which the residential development concerned is not carried out in a phased manner,*

as references to the entire of the residential development concerned.

[...]

(2) *In this section a reference to an instrument is a reference to an instrument executed on or after 11 October 2017 that has been stamped in accordance with paragraph (4) of the heading in Schedule 1 titled "CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance." where –*

(a) *the instrument was chargeable to stamp duty at a rate of 7.5 per cent,*

and

(b) *the property so conveyed or transferred was land.*

(3)

(a) *Subject to subsection (18) and the other provisions of this section, stamp duty paid on an instrument may be repaid in accordance with this section in relation to the land if construction operations on the land commence pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument.*

[...]

[...]

(5)

(a) *Where the satisfaction of any of the following -*

(i) *the condition specified in paragraph (a) of subsection (3),*

[...]

is prevented by -

(I) *an appeal made under section 7 of the Building Control Act 1990, or*

(II) *an order made by a court requiring that construction operations cease to be carried out,*

the period commencing on the making of the appeal or the making of the order by the court and ending on the determination of the appeal or the discharge of the order shall not be reckoned for the purpose of computing the period of 30 months specified in subsection (3)(a) [...].

[...]

(6)

(a) *The amount to be repaid in accordance with this section shall be determined by the formula-*

$$A \times B \times 11/15$$

where-

A is the amount of stamp duty paid, at the rate of 7.5%, on the instrument, and

B is the proportion of the area of the land represented by the appropriate part, expressed as a fraction.

(b) *In relation to the construction of a single dwelling unit-*

(i) *a claim for repayment under this section shall not include any stamp duty attributable to any part of the land not occupied by the dwelling unit, and*

(ii) *for the purposes of the formula in paragraph (a), B is the proportion of the land occupied by the dwelling unit.*

(7)

(a) *A claim for a repayment under this section shall be made in accordance with subsection (8).*

(b) *If the residential development concerned is carried out in a phased manner such that there are 2 or more commencement notices in respect of the construction operations on the land, subsection (8) shall, without prejudice to the accountable person's right to defer making a claim until completion of the residential development concerned, be construed as enabling a claim to be made in respect of such of the construction operations as for the time being are being carried out pursuant to a particular commencement notice.*

(8) *A claim for a repayment under this section shall -*

(a) *be made by an accountable person,*

(b) *without prejudice to paragraph (d), be made in a form and manner specified by the Commissioners,*

(c) *include a declaration, in such form as the Commissioners specify, stating -*

(i) *that the condition specified in subsection (3)(a) has been satisfied, [...]*

[...]

(d) *be made by electronic means and through such electronic systems as the Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 shall apply,*

(e) *not be made until such time as construction operations have commenced pursuant to a commencement notice.*

(9) *For the purposes of satisfying themselves that [...] the conditions for the making of a repayment under this section [...] are satisfied, the Commissioners may specify documents and particulars to be submitted by an accountable person, including the following:*

(a) *a copy of any commencement notice;*

- (b) *a copy of any acknowledgement sent by a building control authority in accordance with article 10(2) or 20A(3)(b), as the case may be, of the Regulations of 1997;*
- (c) *a copy of any planning permission;*
- (d) *the number and gross floor space of dwelling units constructed; and*
- (e) *the area of the land expressed in hectares.*

(10) Subject to the requirements of this section and section 159A, a repayment of stamp duty under this section shall -

- (a) *be made by the Commissioners pursuant to a claim made in accordance with subsection (8),*
- (b) *not carry interest, and*
- (c) *not be made after the expiry of 4 years following, in relation to the relevant residential development, the date of acknowledgement by a building control authority in accordance with article 10(2) or 20A(3)(b), as the case may be, of the Regulations of 1997 and this paragraph applies notwithstanding anything in subsection (7)(b).*

(11)

- (a) *Where the Commissioners are of the opinion that the requirements of this section have not been met in relation to a claim for repayment, they shall decide to refuse the claim and shall notify the claimant in writing of the decision and the reasons for it.*
- (b) *An accountable person aggrieved by a decision to refuse a claim for repayment, may appeal to the Appeal Commissioners against the decision in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision.*

[...]

12. The Respondent has issued guidance on the requirements for SD repayment claims under section 83D of the SDCA 1999. That guidance is set down within Part 07 of the Respondent's Stamp Duty Manual, that part being entitled "Exemption and Reliefs from Stamp Duty". Part 07 of that Stamp Duty Manual refers to SD exemptions and reliefs, and this part includes a section entitled "Part 7: Section 83D – Repayment of stamp duty

where land used for residential development”¹ (hereinafter referred to as “the Relevant SD Manual”). The Relevant SD Manual states:

“[...]

5. Delays in commencing or completing construction

Where it is not possible to satisfy the condition that:

- *within the 30-month period following the date of execution of an instrument in relation to land, constructions operations on the land commence pursuant to a commencement notice (subsection (3)(a)), [...]*

[...]

due to an appeal to An Bord Pleanála under section 7 of the Building Control Act 1990 or a Court Order ordering the cessation of construction, the clock is stopped from the date the appeal or Court Order is made until the date it ceases to have effect (subsection (5)(a)). [...]

[...]”

Submissions

Appellants’ submissions

13. The grounds of appeal were included in a letter from the Appellants to the Commission, which accompanied the Notice of Appeal. The letter stated:

“[...]

1. INTRODUCTION

We [...] appeal under section 949I of the Taxes Consolidation Act 1997 against the decision of the [Respondent], notified on the 3rd of October 2025, to refuse repayment of Stamp Duty under the Residential Development Stamp Duty Refund Scheme.

The refusal was based on the requirement in Section 83D(3)(a) that construction operations commence within 30 months of the execution of the instrument. While construction commenced outside this period, [...] the decision does not reflect the extraordinary and unprecedented circumstances that directly caused the delay –

¹ <https://www.revenue.ie/en/tax-professionals/tadm/stamp-duty/stamp-duty-manual/part-07-exemptions-and-reliefs-from-stamp-duty/section-83d-residential-development-refund-scheme.pdf>

namely, the global Covid-19 pandemic and its prolonged economic, and the personal impact that we suffered.

[...]

3. GROUNDS OF APPEAL

a) Acceptable reasons for delay under legislation and comparison to COVID-19

1. Section 83D allows exceptions where:

1. *An appeal under Section 7 of the Building Control Act 1990 is ongoing, or*
2. *A court order halts construction operations.*

These are narrow, formalised delays, but both acknowledge that circumstances outside the taxpayer's control may justifiably delay commencement.

By comparison, the COVID-19 pandemic was infinitely more disruptive: declared a global pandemic by the WHO on 11 March 2020, it caused mandatory closure of more construction sites in Ireland from January 2021 until phased reopening in April/May 2021, froze planning timeframes, and triggered commencement notice extensions. Unlike a single site-specific order, COVID was systemic and universal, affecting every builder, supply chain, lender and household income.

b) Personal circumstances and compounding hardship

COVID did not simply delay our project in a technical sense – it progressively undermined our capacity to commence within 30 months. Both myself and my wife were self-employed. [REDACTED]

[REDACTED]

[REDACTED] This [REDACTED]

[REDACTED] *made it impossible to finance immediate construction. Our priority became financial survival.*

Construction costs spiralled in 2021-2023, with record inflation in timber, steel, insulation and concrete, compounding financial difficulties. Contractor shortages and backlogs meant that even once funds were secured, labour was unavailable, further delaying commencement.

c) Government acknowledgement of COVID delays

Across multiple statutory regimes, the Irish State recognised COVID as grounds for deadline extension and procedural relief: planning time limits were suspended; construction sites were ordered shut with only phased reopening; S.I. No. 156/2021 and S.I. No. 214/2021 allowed commencement notices to remain valid without re-submission; and the OGP inserted COVID closure clauses into public contracts granting time extensions. These measures show a consistent policy approach: COVID-related delays were real, systemic, and deserving of relief.

d) Substantial compliance and fulfilment of policy intent

Despite these difficulties, I ultimately lodged a valid commencement notice on [REDACTED] and began construction on [REDACTED]. The policy objective of the refund scheme – to activate land for housing supply – has therefore been achieved. To deny repayment solely on a technical breach of the 30-month window, in the face of unprecedented systemic disruption, would be disproportionate, inequitable, and contrary to the spirit of the scheme.

(e) Nature of the dwelling – classification as a holiday home

While the property in question is currently intended as a holiday home, it nonetheless represents an active, completed dwelling that contributes meaningfully to Ireland's overall housing stock. It is not idle or speculative landholding – it is a fully built home, capable of immediate use, occupation, or resale, and therefore a real and tangible addition to the housing system.

The fundamental purpose of the Stamp Duty Refund Scheme is to activate undeveloped land and deliver new homes into circulation. That purpose has been achieved in this case. Whether the dwelling is used seasonally, rented or occupied permanently does not alter the fact that it adds to the nation's housing supply.

Moreover, housing demand is fluid. Holiday homes frequently change hands or function over time, re-entering the general housing market as stock available to meet local or national need. In this way, such dwellings act as a flexible reserve of housing capacity, strengthening resilience within the housing system. To exclude them from eligibility would contradict the broader policy aim of expanding supply and encouraging construction activity.

From an economic standpoint, the construction of a holiday home stimulates exactly the kind of local employment, supply chain demand, and regional investment the State seeks to encourage – especially in rural and tourism areas. Penalising such projects

would unfairly disadvantage those who contribute to local economies and to the country's build environment.

In summary, even as a holiday home, this development fulfils the legislative intent: it converts land into productive housing, expands available stock, and supports rural economic growth. Its classification should not negate eligibility for repayment or diminish the contribution toward national housing objectives.

4. CONCLUSION

This appeal is not an attempt to avoid responsibility, but a sincere request for fairness in light of extraordinary circumstances that no individual or organisation could have foreseen or controlled.

The COVID-19 pandemic was not merely an inconvenience – it was a global crisis that brought the construction industry, financial markets, and everyday life to a standstill. Projects across the country were frozen overnight, costs surged beyond expectation, and access to essential labour, materials, and funding was abruptly cut off. These were not personal choices or mismanagement; they were the unavoidable realities of an unprecedented public emergency.

The legislation itself already recognises that external, uncontrollable events – such as appeals or court orders – can justify delay. It follows naturally and logically that a global shutdown, which paralysed an entire nation's workforce and economy, deserves at least equal recognition. Indeed the Government's own consistent approach across other support and relief schemes during this period confirms that COVID-19 was universally treated as valid grounds for timing exemptions and flexibility.

The purpose of the refund scheme has been achieved. The land has been activated., the project is underway, and new housing is being delivered – precisely the outcomes that the legislation was designed to encourage. Denying repayment in these circumstances would not serve the public interest, nor reflect the spirit of fairness and pragmatism that underpins the scheme.

For these reasons, I respectfully urge the Commission to reconsider the decision and to allow repayment in recognition of the extraordinary, uncontrollable and well documented impacts of the pandemic.

[...]" (sic) (emphasis in the original)

14. The SoC submitted by the Appellants provided additional information on the purchase of the Site and the construction and other delays caused by the Covid-19 pandemic which

the Appellants emphasised was an unprecedented global crisis leading to delays and negative financial consequences which were outside the control of the Appellants. The SoC from the Appellants stated:

[...]

Section 3: Outline of Relevant Facts

[...]

Construction did not commence within 30 months due to severe and unavoidable impacts of the Covid-19 pandemic. The Appellants two self-employed businesses suffered ██████████ loss, construction sites nationally were closed by Government order, material prices escalated dramatically, contractors were unavailable, and planning/building control timelines were disrupted. These factors made commencement within 30 months financially and practically impossible despite continuing intention to develop.

A valid Commencement Notice [Commencement Notice Number included] was lodged on [date ██████████ provided] and construction began on [date in ██████████ provided]. The dwelling is now under construction, meaning the policy objective of Section 83D – activating land for residential development – has been fully achieved.

The [Appellants] contend that the delay was wholly outside their control, that the legislation already recognises unavoidable delays beyond taxpayer control, and that Covid-19 constituted an extraordinary, systemic, State-recognised obstruction equivalent to or exceeding the delays referenced in Section 83D(6)-(7).

Section 4: Statutory Provisions

The Appellants rely on the following legislative provisions:

Section 83D [SDCA 1999]

Section 83D(3)(a) (30-month commencement requirement)

Section 83D(6)-(7) (Legislative recognition of delays beyond taxpayer control)

[...]

COVID emergency measures, including: Planning and Development Act extensions S.I.156/2021 and S.I. 214/2021 (extensions to commencement notice validity)

Government-mandated construction shutdowns

These demonstrate the State's acknowledgement that Covid-19 caused unavoidable nationwide delays.

Section 5: Case Law

[Caselaw cited]

These cases support the principle that: A rigid technical interpretation should not override the purpose of legislation, especially where the taxpayer has substantively complied.

Section 6: Supplementary Information

COVID-19 constituted a unique, State-recognised force majeure-type event that rendered timely commencement impossible for the [Appellants]. We the [Appellants] suffered dual income collapse, escalating construction costs, contractor shortages, and delays arising from Government shutdowns and emergency regulations.

The State itself recognised these delays across planning, building control, public contracting and civil timelines. It would therefore be disproportionately harsh to deny a Stamp Duty refund based solely on a technical deadline impacted by a global emergency.

The development is now underway and the land has been activated for residential use, fulfilling the purpose of the refund scheme. We the [Appellants] respectfully request that the Appeal Commissioner overturn the refusal and allow the repayment [...].” (sic) (emphasis in the original)

Respondent's submissions

15. The Respondent's SoC stated:

[...]

2. Outline of relevant facts

2.1 [...] The appeal is against a decision by Revenue to refuse a Section 83D Residential Development Repayment claim made against the Stamp Duty return with [document ID number provided].

2.2 The Stamp Duty return was filed on 07/06/2021 by [the Appellants solicitor] on behalf of the Accountable Persons, [the Appellants]. Relevant details of the return are as follows:

Category of Instrument: Conveyance / Transfer of Property

Date of Execution: [date of execution provided]

[...]

Type of Property: Non-Residential / Site Only

Address of Property: [address of the Site provided]

Land Area: [REDACTED] hectares

Consideration: €140,000

2.3 Stamp Duty was calculated at €10,500, at the non-residential rate of 7.5%.

2.4 Stamp Duty was paid in full on 07/06/2021 and a Stamp Certificate issued on 08/06/2021.

2.5 The return was amended by the filer on 06/10/2021 and an amended Stamp Certificate issued the same day. The amendment made was the addition of folio numbers for the land transferred [...].

2.6 [The Appellants] contacted [the Respondent's] National Stamp Duty Office (NSDO) by email on 16/06/2025, enquiring about submitting a claim for the Residential Development Stamp Duty Refund Scheme. Several messages were exchanged with a member of the team up to and including 11/08/2025.

2.7 On 19/08/2025 [REDACTED] submitted a claim for a repayment of Stamp Duty under the Residential Development Stamp Duty Refund Scheme via the eRepayments system. The claim was for the amount of €7,700.

[...]

2.9 The claim was reviewed by the NSDO. The following was noted:

- | | |
|---|-------------------|
| <i>i. Date of Execution – per Stamp Duty return</i> | 03/06/2021 |
| <i>ii. Deadline for construction to commence – per S83D(3)(a)</i> | 03/12/2023 |
| <i>iii. Date of Acknowledgement of Commencement Notice as Valid – per S83D refund claim and supporting document</i> | [REDACTED] |
| <i>iv. Date construction commenced – per S83D refund claim</i> | [REDACTED] |

*Based on the information provided, **construction commenced in excess of 30 months from the date of execution of the instrument.***

Note: The response to the 6(b) statement ‘Construction commenced within 30 months following the date of execution of the instrument’ on the Section 83D Declaration submitted was ‘Yes’. This is incorrect as per other information provided with the claim, as outlined above.

2.10 On 28/08/2025 the caseworker wrote to [the Appellant] via the eRepayments systems requesting more information regarding the delay in the commencement of construction.

2.11 On 01/09/2025 [the Appellants] replied via the eRepayments system and provided a letter setting out the reason for the delay.

[The Appellants] advised that exceptional circumstances outside of their control had impacted on the commencement of construction. These circumstances included the effect of the Covid-19 pandemic restrictions on the Irish construction industry as well as on [the Appellants] personally, due to the impact on their respective businesses where they are self-employed.

[The Appellants] acknowledged that construction had commenced outside of the 30-month time frame provided for in the legislation and requested discretion be exercised in the decision.

2.12 The additional information was reviewed and it was determined that the refund must be rejected on the basis that construction commenced outside of the time period of 30 months prescribed in the legislation under S83D(3)(a).

The only provision in the legislation that allows for a delay in construction commencing is set out in S83D(5)(a). The circumstances are as follows:

- i. there being an appeal made under section 7 of the Building Control Act 1990;*
- ii. there being an order made by the court requiring that construction operations cease to be carried out.*

Neither of these circumstances were shown to have occurred.

2.13 The claim was formally rejected on 03/10/2025. [REDACTED]

[...]” (sic) (emphasis in the original)

16. On 9 December 2025, the Respondent submitted additional documentation to the Commission for consideration, including a copy of the SD repayment claim filed by the Appellants and the correspondence between the parties prior to the Respondent’s refusal of the SD repayment claim.

Material Facts

17. Having considered the documentation and submissions in this appeal, the Commissioner makes the following findings of material fact:
 - 17.1. On [REDACTED], an instrument was executed in respect of the conveyance or transfer on sale of the Site to the Appellants.
 - 17.2. On 7 June 2021, a SD return was filed on behalf of the Appellants in respect of the conveyance or transfer on sale of the Site to the Appellant.
 - 17.3. The consideration stated on the SD return was €140,000.
 - 17.4. The SD liability on the conveyance or transfer on sale of the Site, charged at the non-residential SD rate of 7.5%, was €10,500.
 - 17.5. The Appellants paid the SD liability of €10,500.
 - 17.6. A SD certificate issued on 8 June 2021.
 - 17.7. The SD return was amended, on behalf of the Appellants, on 6 October 2021, whereby folio numbers for the Site transferred were included, and an amended SD certificate issued on the same date.
 - 17.8. The Commencement Notice was submitted to the local building control authority on [REDACTED] and acknowledged as valid by that authority on [REDACTED].
 - 17.9. On [REDACTED] construction of a residential dwelling commenced on the Site, pursuant to the Commencement Notice.
 - 17.10. On 19 August 2025, the Appellants submitted a SD repayment claim in accordance with section 83D of the SDCA 1999, together with accompanying documentation, to the Respondent via the online eRepayments facility on ROS.
 - 17.11. The amount of the SD repayment claimed was €7,700.
 - 17.12. On 28 August 2025, the Respondent requested additional information from the Appellants regarding the reasons for the commencement of construction on the Site outside the thirty-month time limit set down in section 83D(30(a) of the SDCA 1999.
 - 17.13. On 1 September 2025, the Appellants provided additional information to the Respondent regarding the reasons for construction on the Site commencing more than thirty months after the date of execution of the instrument conveying or transferring the Site to the Appellants [REDACTED]. The reasons provided

included the construction delays and difficulties arising as a consequence of the Covid-19 pandemic and the adverse business impacts that the pandemic had on the Appellants' businesses, which were all factors that were outside the control of the Appellants.

17.14. On 3 October 2025, the Respondent refused the SD repayment claim on the basis that construction operations commenced on the Site outside the statutory time limit of thirty months following the execution of the instrument of conveyance or transfer on sale of the Site to the Appellants, and the reasons for the delay provided by the Appellants on 1 September 2025 did not fall within the legislative exceptions to the thirty-month time limit as set down in section 83D of the SDCA 1999.

17.15. In its correspondence to the Appellants dated 3 October 2025, the Respondent outlined the possibility that the Appellants could appeal the refusal of the SD repayment claim in accordance with the provisions of section 83D(11)(b) of the SDCA 1999.

Analysis

Burden of proof in tax appeals

18. The appropriate starting point for this analysis is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that the assessment to tax or the decision of the Respondent is incorrect.

19. This proposition is now well established by case law. For example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 ("*Menolly Homes*"), at paragraph 22, Charleton J. stated:

"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."

20. The Commissioner considers it helpful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute [...]"

21. The Court of Appeal affirmed this position recently in the case of *JSS & Others v A Tax Appeal Commissioner* [2025] IECA 96. In that case McDonald J. stated at paragraph 34:

“[...] the taxpayer bears the burden of demonstrating that a tax assessment is wrong. [...]”

22. In *Hanrahan v The Revenue Commissioners* [2024] IECA 113 (“*Hanrahan*”), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. In that case, the judgment of Donnelly J. and Butler J. stated:

“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 [...].”

Principles of statutory interpretation

23. As this appeal concerns the interpretation of the legislation providing for SD repayment in certain circumstances (section 83D of the SDCA 1999) the Commissioner considers it appropriate at this stage to summarise the established principles of statutory interpretation which apply when interpreting taxation statutes.

24. The principles to be applied to statutory interpretation were set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”). In that case, McDonald J. considered the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60.

Based on the judgment of McKechnie J. [in the Dunnes Stores v. The Revenue Commissioners case], the relevant principles can be summarised as follows:

(a) *If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

(b) *Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:*

“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

[...]

(g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter

of the taxing Act as interpreted by the established canons of construction so far as possible”.

25. The principles of statutory interpretation, as stated in the judgment of McDonald J. in *Perrigo* have been confirmed in the more recent decision of the Supreme Court in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 and *Hanrahan* (as referred to above).
26. The approach to statutory interpretation as set down in *Perrigo* is authoritative. The judgment provides a framework for interpreting tax legislation, including the legislation at issue in this appeal (section 83D(3)(a) of the SDCA 1999). The Commissioner is satisfied that the words in section 83D(3)(a) of the SDCA 1999 are plain and the meaning of those words is self-evident. Therefore, the ordinary meaning of the words should prevail when interpreting the section. In addition, the context is critical.

Section 83D of the SDCA 1999

27. The Appellants are appealing the decision of the Respondent whereby it refused the claim for a repayment of SD under section 83D(3)(a) of the SDCA 1999. Section 83D(3)(a) provides, in certain circumstances, for a repayment of SD paid on an instrument in relation to the conveyance or transfer on sale of land if construction of a residential dwelling commences on the land pursuant to a commencement notice within the period of thirty months following the date of execution of the instrument. In this case, the date of execution of the instrument was [REDACTED]. Therefore, to be entitled to a repayment of SD under the provisions of section 83D(3)(a) of the SDCA 1999, construction of the residential dwelling in this case was required to commence on the Site within thirty months of [REDACTED]. Therefore, the deadline for construction to commence on the Site is [REDACTED]. The Commissioner has found as a material fact that construction commenced on the Site on [REDACTED] pursuant to the Commencement Notice. The date of commencement of construction is borne out by the submissions received from both parties. The Commissioner notes that the Appellants confirmed the date that construction commenced in their application to the Respondent for the SD repayment, that date being [REDACTED]. Therefore, the Commissioner is satisfied that construction commenced on the Site after the thirty-month statutory time limit had elapsed.
28. The Commissioner notes that, when applying for the SD repayment, the Appellants confirmed in section 6(b) of the form titled “*Declaration as required under Section 83D Stamp Duties Consolidation Act 1999 FOR A SINGLE DWELLING UNIT*”. Therefore, the Appellants confirmed on the application for the SD repayment that construction commenced within thirty months following the date of execution of the instrument. The

Respondent has submitted that this was an error by the Appellants as the other documentation submitted by the Appellants with the SD repayment claim confirms that construction commenced on [REDACTED], and this was outside the thirty-month time limit. The Commissioner is satisfied that, based on the submissions and documentation before her, received from both parties, construction did not commence prior to [REDACTED]. This is borne out by the document issued by the local building control authority, submitted by the Respondent as part of this appeal, acknowledging the Commencement Notice as valid on [REDACTED]. Furthermore, the Commissioner notes that the Appellants did not submit to the Commission in either the cover letter submitted with the Notice of Appeal (wherein the grounds of appeal were set out), in the Notice of Appeal itself or in their SoC that construction commenced prior to [REDACTED]. The Commissioner finds that construction did not commence on the Site on or before [REDACTED], and therefore construction did not commence within the thirty-month time limit under section 83D(3)(a) of the SDCA 1999.

29. Section 83D(5)(a) of the SDCA 1999 provides for two exceptions to the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999. The first exception is where there is a planning delay due to an appeal under section 7 of the Building Control Act 1990. The second exception is where the delay is due to a court order requiring construction operations to cease. The Commissioner is satisfied that, based on the submissions before her, there has been no appeal against planning permission or a court order to cease construction in this case. Therefore, the Commissioner finds that the delay in commencement of construction of the residential dwelling on the Site does not fall into either of the two exceptions listed in section 83D(5)(a) of the SDCA 1999. Furthermore, the Commissioner notes that section 83D of the SDCA 1999 does not provide for any other exceptions to the thirty-month time limit set down in section 83D(3)(a) SDCA 1999.
30. The Commissioner notes the submissions from the Appellants that the delay in commencing construction in this case was due to a number of factors including construction delays and disruption caused by the Covid-19 pandemic and the adverse financial impact the pandemic had on the Appellants' businesses which led to delays and difficulties in commencing construction which were wholly outside the control of the Appellants. The Commissioner is satisfied that section 83D of the SDCA 1999 does not contain any provision whereby such factors can be taken into account in determining whether a SD repayment can be made where the thirty-month time limit is not satisfied. Therefore, the Commissioner finds that such factors are not relevant and cannot be used to extend the statutory thirty-month time limit under section 83D(3)(a) of the SDCA 1999.

31. Furthermore, the Appellants submitted that the Irish government had acknowledged that the delays and disruption caused by the Covid-19 pandemic were valid reasons to provide for deadline extensions and procedural relief in a number of areas. The Appellants referred to a number of statutory instruments which, *inter alia*, had the effect of extending the period permitted for construction to commence under commencement notices. The Appellants also referred to the inclusion of pandemic closure clauses in certain public contracts resulting in effective extensions to time limits under such contracts in certain circumstances outside the control of the contracting parties. The Commissioner has considered the Appellants' submissions in this respect and she is satisfied that there has been no statutory instrument or other measure adopted, either during the course of the Covid-19 pandemic or in its aftermath, which has the effect of extending the statutory thirty-month time limit applicable under section 83D(3)(a) of the SDCA 1999 in the circumstances described on appeal by the Appellants in this case.
32. The Appellants contend in their grounds of appeal that the fundamental purpose of section 83D of the SDCA 1999 is to encourage the construction of new homes and to discourage idle or speculative landholding. The Commissioner notes the points made by the Appellants and also the reference by the Appellants to the fact that the dwelling being developed on the Site is intended for use as a holiday home. However, the Commissioner is satisfied that the words in section 83D(3)(a) of the SDCA 1999, relating to the time limit for construction to commence, are plain and the meaning of those words is self-evident. Therefore, the plain and ordinary meaning of the words should prevail when interpreting this section. The Commissioner finds that the purposive approach to the interpretation of the statute in question here, as contended by the Appellants, is not appropriate in circumstances where the words in the tax legislation are plain and ordinary, and the meaning of those words is entirely self-evident.
33. Section 83D of the SDCA 1999 does not provide for extenuating circumstances in which the thirty-month requirement may be mitigated, other than the two exceptions to the statutory thirty-month time limit set down in section 83D(5)(a) of the SDCA 1999. Section 83D of the SDCA 1999 does not provide for any exceptions to the time limit in circumstances such as those described in this appeal, where there were delays and difficulties in the construction sector arising from the Covid-19 pandemic or where the Appellants encountered financial and business difficulties due to the onerous impact of the pandemic on their respective businesses. The Commissioner has no authority or discretion to direct that a repayment be made to the Appellants where the claim for repayment does not comply with the statutory time limit set down in section 83D(3)(a) of the SDCA 1999, and the reasons for the delay do not fall within either of the two

exceptions laid down in section 83D(5)(a) of the SDCA 1999. Construction of the residential dwelling began on [REDACTED]. The date of execution of the instrument was [REDACTED]. The thirty-month time limit expired on [REDACTED]. Neither of the two exceptions laid down in section 83D(5)(a) of the SDCA 1999 are applicable in this case. Therefore, as construction did not commence within the thirty-month time limit set down in the legislation (section 83D(3)(a) of the SDCA 1999), the SD repayment claimed pursuant to section 83D of the SDCA 1999 cannot be allowed.

Jurisdiction of an Appeal Commissioner

34. Finally, the Commissioner notes the Appellants' request that the Commissioner use discretion and show leniency in the circumstances where the delays in commencing construction were wholly outside the control of the Appellants. The Appellants stated the construction delays were outside their control as they arose directly and indirectly from the Covid-19 pandemic. The Commissioner notes that during the pandemic, there were significant public health measures implemented over a period of time, with those measures including temporary closure of construction sites and significant restriction on other types of businesses such as those of the Appellants.
35. It is appropriate at this point for the Commissioner to summarise her jurisdiction in tax appeals. In *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"), the Court of Appeal made clear that the function of an Appeal Commissioner is to determine by reference to applicable legislation the correct amount of tax owed. At paragraph 20, Murray J. stated:

"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."

36. In *Lee*, Murray J. continued at paragraph 76 of the judgment:

"[...] 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."

37. The Commissioner empathises with the difficulties the Appellants faced in this case. However, the Commissioner is satisfied that she does not have any jurisdiction to set aside a decision of the Respondent that has been made in accordance with SD

legislation, on the basis of the Appellants' business difficulties or due to the consequences of the Covid-19 pandemic which were outside the control of the Appellants. Such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. These matters come within the jurisdiction and remit of the Courts.

Conclusion

38. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellants who must prove, on the balance of probabilities, that an assessment to tax or a decision of the Respondent is incorrect. Furthermore, in accordance with the decision in *Hanrahan*, where the material facts in a tax appeal are not in dispute, as in this appeal, the Commissioner must objectively assess the relevant tax legislation and its application to the facts outlined on appeal when making her determination. The Commissioner has objectively considered the relevant SD legislation in this appeal, section 83D of the SDCA 1999, and its application to the facts in this case. The Commissioner finds that:

38.1. The decision of the Respondent is correct, whereby it refused to repay SD incurred on the execution of the instrument conveying or transferring the Site to the Appellants, as the construction on the Site did not commence within the thirty-month time limit set down in section 83D(3)(a) SDCA 1999.

38.2. The statutory tax limit set down in section 83D(3)(a) of the SDCA 1999 applies unless one of the two exceptions set down in section 83D(5)(a) of the SDCA 1999 apply.

38.3. The delay in the commencement of construction in this case does not fall within either of the two exceptions to the statutory time limit set down in section 83D(5)(a) of the SDCA 1999.

39. Therefore, for the reasons set out above, and following objective assessment of the relevant legislation and its application to the facts of this case, the Commissioner is satisfied that this appeal fails as the Appellants have not discharged the burden of proof to satisfy the Commissioner that the Respondent was incorrect in its application of the statutory provisions. Hence, the Commissioner finds that the Respondent's decision, to refuse the Appellants SD repayment claim under section 83D of the SDCA 1999, was correct.

40. While empathising with the Appellants financial and business difficulties and the construction delays that arose from the extenuating circumstances of the Covid-19 pandemic and the related public health measures, the Commissioner finds that the

legislation does not provide for any exception to the application of the thirty-month time limit, laid down in section 83D(3)(a) of the SDCA 1999, for those difficulties or delays.

41. The Commissioner does not have jurisdiction to use discretion in the application of the legislation or to show the leniency requested by the Appellants.

Determination

42. As such and for all the reasons set out above, the Commissioner determines that the decision of the Respondent of 22 July 2025 to refuse the Appellants claim for a SD repayment pursuant to section 83D of the SDCA 1999, in the amount of €7,700, shall stand.
43. The Commissioner appreciates that this determination will be disappointing for the Appellants. The Appellants were entitled to check if the Respondent's refusal of the SD repayment claim was correct and they were prudent to do so in all the circumstances. However, as noted above, the legislation does not afford the Commissioner any discretion in this matter.
44. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL and 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

45. 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 Appellants 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

46. 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 'Suzanne Carter'.

Suzanne Carter
Appeal Commissioner
16 April 2026