AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

70TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against a decision of the Revenue Commissioners (from here on referred to as the "Respondent") on 28 April 2025 to clawback of 40% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997").

2. The total amount of tax under appeal is €10,000.

Background

3. On 3 January 2021, the Appellant, as a first time property purchaser, initiated an application to the Respondent for Help to Buy relief pursuant to the provisions of section 477C of the TCA 1997 in relation to the purchase of a house at [redacted] (from here on referred to as the "Property").

4. On 12 May 2021, the Appellant initiated a claim under the Help to Buy scheme (from here on referred to as the "Claim").

5. On 13 May 2021, the developer of the Property verified the Claim and a payment of €25,000 subsequently issued to the developer under the conditions of the Help to Buy scheme.

6. On 7 July 2021, a Stamp Duty Return for the sale of Property was filed with Respondent.

7. On 3 March 2025, the Appellant wrote to the Respondent stating that she had vacated the Property on 31 January 2025 due to her employment circumstances.

8. On 28 April 2025, the Respondent wrote to the Appellant advising her of its decision pursuant to the provisions of section 477C(20) of the TCA 1997 to clawback €10,000 – being 40% - of the €25,000 in Help to Buy relief received by the Appellant.

9. At the oral hearing, the Appellant confirmed that she wished for the hearing of this appeal to be held in private. As a result, the publication of this determination shall be made in a way that, in so far as it is possible, does not reveal the identity of any person whose affairs were dealt with on a confidential basis during the proceedings concerned in compliance with section 949AO(4) of the TCA 1997.

Legislation and Guidelines

10. The legislation relevant to this appeal is section 477C of the TCA 1997 which is set out in full at **Annex 1** of this determination.

Submissions

Appellant's submissions

11. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Appellant. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.

12. The Appellant submitted the following Grounds of Appeal in her Notice of Appeal:

"I would like to appeal against a Notice of Assessment, issued on 28th April 2025, regarding a clawback for the Help to Buy scheme.

I purchased a property, [redacted]*, on 7th July 2021, and claimed €25,000 through the Help to Buy scheme, which was approved on 26th May 2025, Ref:* [redacted] *This is the only home I have purchased, and I bought this home with the intention of it being my sole residence for the foreseeable future. Unfortunately, due to events outside of my control, I have been forced to temporarily relocate for employment reasons, but however, as this is relocation was not requested by my previous employer, Revenue feel unable to allow an exemption to the clawback provision.*

While the legislation does not contain any extenuating circumstances in which the liability could be waived, The Tax and Duty Manual, Part 15-01-46 states the following:

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, Revenue 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.

I believe this demonstrates that Revenue have the discretion to provide exemption when appropriate.

I currently meet, or in the case of the last point I am prepared to meet, all of these conditions, with exception of the first point, where my situation is slightly different. I had to leave my previous employment for reasons which amounted to constructive dismissal.

Evidence of claims submitted to WRC and IRB can be provided upon request. Despite applying for numerous other jobs within commuting distance of the property, I was not able to secure an offer of employment. Evidence of this can also be provided upon request.

Therefore, I had no choice but to secure employment elsewhere, albeit temporarily, until I can find suitable employment within a commutable distance.

I cannot find the fundamental principles this exemption was based upon, but I am assuming this exemption is to prevent people from being unable to continue in their current employment, and being forced to choose between seeking, and potentially failing, to secure alternative employment to maintain the property purchased, or forfeiting the property entirely. I would argue the same reasoning applies in my case, as if I did not accept the offer of employment I had at the time, I would have become unemployed, and would have therefore lost the property through the inability to maintain mortgage payments. I am therefore asking the Revenue Commissioners to reconsider allowing the exemption, so that I can continue to search for employment near the property, thus allowing me to move back at the first available opportunity.

I believe this is reflected in the rules for statutory interpretation as set out in the judgment of McDonald J. in Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General ([2020] IEHC 552), where the fundamental principles of statutory interpretation were summarised at paragraph 74, and contain the following:

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

Furthermore, in my communications with Revenue regarding this matter, I asked if I could pause the time, and restart the time when I was able to move back into the property, and I received this response:

'If you are moving temporarily for your current employment, Revenue may grant you dispensation. The is no legal entitlement to this.'

This statement would confirm that revenue do in fact have the ability to grant dispensation, and I would respectfully ask that they do so in this case. I believe not to do so in my case, due to a technicality, but when all other conditions of the dispensation have been met might be considered an improper exercise of discretion. The law prevents exercising discretion in a way that could be considered capricious or arbitrary, and furthermore, if a clawback provision confers a discretion on a claimant as to whether or not repayment is due, which is excised in bad faith or only in respect of certain claimants, then this decision could be considered invalid.

Furthermore, I would also respectfully ask the Revenue Commissioners to consider this appeal in light of Section 477C (20) TCA 1997, which states:

(a) Where a person who is liable to pay to the Revenue Commissioners an amount referred to in subsection (17)(b) or paragraph (a), (b), (c) or (d) of subsection (18) fails to pay that amount, a Revenue officer may, at any time, make an assessment or an amended assessment on that person for a year of assessment or accounting period, as the case may be, in an amount that, according to the best of that officer's judgement, ought to be charged on that person.

I believe the words "may" and "ought" demonstrate that it is not mandatory for the Respondent to collect the sum due I again respectfully request that the Revenue Commissioners consider that discretion and waive the liability accordingly.

I would also like to respectfully ask the Revenue Commissioners to consider two further points. Firstly I believe the legislation may be unclear and unfair with regards to the calculation of clawback. There is no reason provided, and it is not explicitly stated, that the claimant is required to pay back an amount of the appropriate payment that corresponds to a time the claimant was resident within the property, and fully compliant with the terms of the agreement. By calculating the percentage of the appropriate *payment based on years, rather than by months, or even weeks, Revenue is effectively penalising claimants over and above that proportionate to the agreed terms and 'damages', thus requiring claimants to repay part of the appropriate payment for a sometimes considerable amount of time wherein the claimant was resident, and fully compliant with the terms of agreement.*

The S.I. No. 27/1995 - European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 states the following:

3. (2) For the purpose of these Regulations a contractual term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.

(3) In determining whether a term satisfies the requirement of good faith, regard shall be had to the matters specified in Schedule 2 to these Regulations.

SCHEDULE 2

Guidelines for Application of the Test of Good Faith

In making an assessment of good faith, particular regard shall be had to

- *the strength of the bargaining positions of the parties,*
- *whether the consumer had an inducement to agree to the term,*
- *whether the goods or services were sold or supplied to the special order of the consumer, and*
- *the extent to which the seller or supplier has dealt fairly and equitably with the consumer whose legitimate interests he has to take into account*

In addition, I believe the calculation of clawback for the Help To Buy scheme is also not in alignment The Rule of Law, wherein The Rule of Law, enshrined in Article 2 of the Treaty on European Union, is the cornerstone of the European Union. The rule of law guarantees the uniform application of EU law across all Member States, creating a predictable environment for people and businesses. Other clawbacks related to taxation reliefs are drafted within the Irish Statute Book, the calculation of which are not aligned with the calculation of the Help to Buy clawback. For instance, there is a clawback provision for those refunded for excess stamp duty if renting to social housing *sector contained in the Finance (Covid-19 and Miscellaneous Provisions) Act 2021, which provides amendment to the Stamp Duties Consolidation Act, 1999, by inserting the following section after section 83D:*

83E. (11) The amount of a clawback shall be determined by the formula: A x [(10 - Y)/10]

where—

A is the amount of stamp duty repaid that was attributable to the qualifying relevant residential unit,

Y is the number of years (including a part of a year) that have expired, after the qualifying date, on the date on which the qualifying lease is terminated.

Therefore, there is a significant difference, which may be inferred as a financial penalty for the claimant, on the calculations between the two taxation related clawback calculations. Pertaining to my liability, the Help to Buy clawback requires me to pay be €10,000 immediately, without the sale of the property, whereas the above clawback calculation would require me to pay back €3,750, (substituting the 10 year stamp duty period for the 5 year period of the Help to Buy scheme). This is a considerable difference, especially considering there has been no sale of the property, and the latter clawback calculation is targeted at the construction industry, whereas Help to Buy is provided with a view of aiding individual consumers requiring financial assistant to access the housing market.

The second point I would like to respectfully ask the revenue Commissioners to consider is how the clawback of the Help to Buy claim is interpreted regarding the following points of law:

The common law restraint of trade doctrine is a legal principle that prevents parties from entering into contracts that unreasonably restrict someone's ability to trade or conduct business. Essentially, it protects the public interest in allowing individuals to earn a livelihood and engage freely in commercial activity. This doctrine applies to various contractual arrangements, not just employment contracts or business sales, where a person's freedom to exercise their trade or employment is restricted. In the EU, agreements that restrain trade, such as those limiting a person's ability to work or trade, are generally considered void unless they are justified by a legitimate interest and are no broader than necessary. This principle is rooted in the fundamental right to freely use one's labor and exercise one's trade

Article 21(1) of the Treaty on the Functioning of the European Union (TFEU), which provides that 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'

The following articles can be found within the Charter of Fundamental Rights of the European Union (2000/C 364/01):

Article 45 Freedom of movement and of residence 1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Article 15 Freedom to choose an occupation and right to engage in work 1. 2. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

Finally, I would like to thank the Revenue Commissioners for their time and consideration of this appeal."

13. At the oral hearing of the appeal the Appellant submitted that she is asking the Commissioner to declare that the Respondent has failed to exercise its discretion in a rational and proportionate manner and that, as a result, the decision of the Respondent should be vacated or amended accordingly.

14. It is the Appellant's position that the discretion in relation to clawback of the Help to Buy scheme which is contained in the Appellant's Tax and Duty Manual Part 15-01-46 section 15.3 in relation to temporary relocation due to employment circumstances should be interpreted by the Respondent as applying to her employment circumstances. She stated at the oral hearing that she is not asking the Commissioner to extend the concession which allows the Respondent to exercise its discretion.

15. The Appellant stated that she had been forced to leave her previous employment within the State as a result of circumstances which she submitted amounted to constructive dismissal. She stated that she had worked as the [redacted] in the [redacted] and that, due to the cessation of her employment, she had been unable to gain employment at the same level within the State. As a result, she had to take up employment in the United Kingdom. She stated that she has continued to look for suitable employment within the State since January 2025 but that no suitable jobs have arisen.

Respondent's submissions

16. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Respondent. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.

17. The Respondent submitted that section 477C(17) of the TCA 1997 contains the clawback provision in relation to the Help to Buy scheme and submitted that, as the Appellant had ceased occupation of the Property within 5 years of purchasing the Property, the clawback provisions apply to the Appellant in this appeal.

18. The Respondent further submitted that the Appellant is seeking the exercise of a non-statutory administrative concession which is contained in the Tax and Duty Manual. This, it was submitted, is a concession which is extended to persons who are compelled to vacate their properties due to a temporary secondment initiated by their employer.

19. It was submitted that, as the Appellant has ceased her employment and that her vacating of the Property was not as a result of a temporary secondment initiated by her employer, the non-statutory concession contained in the Tax and Duty Manual does not apply to the Appellant's situation.

20. It was submitted that this non-statutory administrative concession was introduced by the Respondent in order to bring the Help to Buy regime and the Capital Gains Tax regime into alignment. In particular, it was submitted that this is to avoid a situation where a person might be required to repay Help to Buy relief received on a property which is recognised as their Principal Private Residence to which Capital Gains Tax would not apply on some future sale.

21. The Respondent submitted that, the TCA 1997 does not contain any provision which allows a discretion to be exercised to absolve a recipient of the Help to Buy scheme from the clawback provisions contained in section 477C(17) of the TCA 1997.

Material Facts

22. The material facts are not at issue in this appeal and the Commissioner accepts the following as material facts:

    22.1. On 3 January 2021, the Appellant, as a first time property purchaser, initiated an application to the Respondent for Help to Buy relief pursuant to the provisions of section 477C of the TCA 1997 in relation to the purchase of the Property.

22.2. On 12 May 2021, the Appellant initiated a claim under the Help to Buy scheme.

22.3. On 13 May 2021, the developer of the Property verified the claim and a payment of €25,000 subsequently issued to the developer under the conditions of the Help to Buy scheme.

22.4. On 7 July 2021, a Stamp Duty Return for the sale of Property was filed with Respondent.

22.5. On 3 March 2025, the Appellant wrote to the Respondent stating that she had vacated the Property on 31 January 2025 due to her employment circumstances.

22.6. On 28 April 2025, the Respondent wrote to the Appellant advising her of its decision pursuant to the provisions of section 477C(20) of the TCA 1997 to clawback €10,000 of the €25,000 in Help to Buy relief received by the Appellant.

Analysis

23. It is long established that, in appeals against assessments to tax, the burden of proof rests on the taxpayer. Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168 at paragraph 50 stated that:

"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self-assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in

accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."

24. Charleton J. confirmed that the burden of proof rests on Appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 (from here on referred to as "*Menolly Homes"*) when he stated at paragraph 22:

"*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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable.*"

25. This has most recently been confirmed by the Court of Appeal by McDonald J. in *JSS & Ors v A Tax Appeal Commissioner and the Criminal Assets Bureau* [2025] IECA 96 when he stated at paragraph 34 that:

"Both s. 949AK(1) of the 1997 Act and s. 50(6) of the 1970 Statute proceed on the basis that the assessment will stand unless it is established that the assessment is wrong. As outlined above, there is a long line of case law on both sides of the Irish Sea which has taken the consistent view that, under the provisions of these sections (and their respective predecessor provisions), the taxpayer bears the burden of demonstrating that a tax assessment is wrong..."

26. The standard of proof in tax appeals is the civil standard of the balance of probabilities, that is to say, the Appellant must establish that it is more likely than not that, in this appeal, the Respondent's decision of 28 April 2025 was incorrect.

27. The Appellant initiated an application in relation to the Help to Buy scheme on 3 January 2021 and on 12 May 2021 the Appellant initiated a claim under the Help to Buy scheme.

28. Payment under the Help to Buy Scheme was made to the developer of the Property which the Appellant purchased in July 2021 and which the Appellant began occupation of in July 2021.

29. The Appellant accepts that she ceased occupation of the property in January 2025 during the fourth year of her ownership of the Property.

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

"(a)On its completion, a qualifying residence or a self-build qualifying residence shall be occupied by the claimant as his or her only or main residence.

(b)(i)Where an appropriate payment is made on foot of a claim under this section, and the qualifying residence or self-build qualifying residence ceases to be occupied—

(I)by the claimant, or

(II)where more than one individual is a party to the claim, by all of those individuals,

within 5 years from occupation of the residence, the claimant shall notify the Revenue Commissioners and, in accordance with subparagraph (ii), pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or the lesser percentage there specified of the amount of the appropriate payment.

(ii)Where the residence ceases to be occupied as mentioned in subparagraph (i)—

…

(IV)within the fourth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 40 per cent of the amount of the appropriate payment, or

…"

31. The Appellant complied with her obligations and notified the Respondent of the fact of her ceasing occupation of the Property in January 2025. This was within the fourth year of her occupation of the Property which began in July 2021.

32. The use of the word "*shall*" as set out in section 477C(17) of the TCA1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the obligation of a person who ceases their occupation of a qualifying residence within the fourth year from occupation to pay to the Respondent an amount equal to 40% of the amount paid to them or on their behalf under the Help to Buy scheme may be reduced or waived.

33. Therefore, the Commissioner finds that the decision of the Respondent of 28 April 2025, pursuant to the provisions of section 477C(20) of the TCA 1997 to clawback €10,000 of the €25,000 in Help to Buy relief received by the Appellant was correct.

34. The Commissioner notes that the Appellant has based her appeal on the failure of the Respondent to apply a non-statutory concession which is contained in the Tax and Duty Manual to her situation.

33. The Commission is a creature of statute and the powers conferred on Appeal Commissioners were at the time of the judgment in *Menolly Homes* to be found in section 934 of TCA 1997 and are now set out in section 949AK of TCA 1997 (as inserted by the Finance (Tax Appeals) Act, 2015), subsection (2) of which provides that:

> *"If, on an appeal against an assessment that—*
>
> *(a) assesses an amount that is chargeable to tax, and*
>
> *(b) charges tax on the amount assessed,*
>
> *the Appeal Commissioners consider that the appellant is overcharged or, as the case may be, undercharged by the assessment, they may, unless the circumstances of the case otherwise require, give as their determination in the matter a determination solely to the effect that the amount chargeable to tax be reduced or increased."*

34. In a similar manner, section 949AL (as inserted by the Finance (Tax Appeals) Act, 2015), subsection (1) provides that:

> *"In relation to an appeal against an appealable matter, other than—*
>
> *(a)an assessment, or*
>
> *(b)a matter referred to in section 949AK(3),*
>
> *the Appeal Commissioners shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand."*

35. The position as set out by Charleton J. in his decision in *Menolly Homes* is relevant in this regard. He stated at paragraph 12 that "*Revenue law has no equity…*" and went on to state that:

> *"How tax becomes payable, what exceptions avoid general liability as and when these genuinely arise, when payment is due, what records have to be maintained by taxpayers, which levels of taxation are applicable to what transactions or events and how the power of the tax collector is both defined and circumscribed are all precisely defined by modern legislation. In a similar way, what remedy that taxpayer has against*

a taxation demand is not general but specific. It is cut from the cloth whereby the precise liability is set by statute law and tailored individually by the legislature in the way that suits their perception of how an income tax, a corporation tax, a capital gains or acquisitions tax or a value added tax appeal should be set up as to the scope of appeal, the procedure on that appeal and the remedies available to the appellate body."

36. The decision of Charleton J. was more recently considered in *Lee v Revenue Commissioners* [2021] IECA 18 where Murray J., giving the decision of the Court of Appeal, held that:

"64. … From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge.

…

76. The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA 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. 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 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 Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have 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."

37. Whilst she has some sympathy with the Appellant's position and the reasons why she ceased occupation of the Property, the fact is that the Commissioner has no jurisdiction

to compel the Respondent to apply the provisions of a non-statutory concession which the Respondent may exercise The non-statutory concession in this appeal is contained in section 15.3 of the Respondent's Tax and Duty Manual Part 15-01-46. Tax and Duty Manuals produced by the Respondent are administrative guidance documents outlining the Respondent's position on tax legislation, they are not legislation and carry no legal weight.

Determination

38. The Commissioner determines that the Appellant has not succeeded in showing that the Respondent's decision of 28 April 2025 to clawback 40% of the Help to Buy relief which the Appellant was previously granted pursuant to section 477C of the TCA 1997 is incorrect.

39. The Respondent's decision of 28 April 2025 shall therefore stand.

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

Notification

41. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) of the TCA 1997 and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the Parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The Parties shall not receive any other notification of this determination by any other methods of communication.

Appeal

42. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Clare O'Driscoll
Appeal Commissioner
13 May 2026

Annex 1

Section 477C of the TCA 1997 - Help to Buy.

(1)In this section -

'appropriate payment' shall be construed in accordance with subsection (4);

'appropriate tax' has the meaning assigned to it by section 256;

'approved valuation', in relation to a self-build qualifying residence, means the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence;

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

'income tax payable' has the meaning assigned to it by section 3;

'loan' means any loan or advance, or any other arrangement whatever, by virtue of which interest is paid or payable;

'loan-to-value ratio' means the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence;

'PPS number', in relation to an individual, means the individual's personal public service number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

'purchase value' means -

> *(a)in the case of a qualifying residence, the price paid for the qualifying residence, being a price that is not less than its market value, or*
>
> *(b)in the case of a self-build qualifying residence, the approved valuation;*

'qualifying contractor' has the meaning assigned to it by subsection (2);

'qualifying lender' has the meaning assigned to it by section 244A(3);

'qualifying loan', means a loan, which -

> *(a)is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in -*
>
> > *(i)the purchase of a qualifying residence, or*

(ii)the provision of a self-build qualifying residence (including, in a case where such acquisition is required for its construction, the acquisition of land on which the residence is constructed),

(b)is entered into solely between a first-time purchaser and a qualifying lender (but this does not exclude a loan to which a guarantor is a party), and

(c)is secured by the mortgage of a freehold or leasehold estate or interest in, or a charge on, a qualifying residence or a self-build qualifying residence;

'qualifying period' means the period commencing on 19 July 2016 and ending on 31 December 2021;

'qualifying residence' means -

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

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

and -

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

(ii)in respect of which the construction work is subject to the rate of tax specified in section 461(1)(c) of the Value-Added Tax Consolidation Act 2010, and

(iii)where the purchase value is not greater than -

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

(II)in all other cases, €500,000;

'relevant tax year' means a year of assessment, within the 4 tax years immediately preceding the year in which an application is made under this section, in respect of

which a claim for an appropriate payment, or part of such appropriate payment, is made by an individual;

'Revenue officer' means an officer of the Revenue Commissioners;

'self-build qualifying residence' means a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;

'tax reference number' means in the case of an individual, the individual's PPS number or in the case of a company, the reference number stated on any return of income form or notice of assessment issued to that company by the Revenue Commissioners;

'tax year' means a year of assessment within the meaning of the Tax Acts;

'VAT registration number', in relation to a person, means the registration number assigned to the person under section 65 of the Value-Added Tax Consolidation Act 2010.

(2)In this section, a 'qualifying contractor' means a person who applies to the Revenue Commissioners for registration as a qualifying contractor (pursuant to arrangements for such registration that are put in place by the Revenue Commissioners) and in respect of whom the Revenue Commissioners are satisfied is entitled to be so registered and -

> *(a)who -*
>
> > *(i)complies with the obligations referred to in section 530G or 530H, or*
> >
> > *(ii)in the case of a contractor who is not a subcontractor to whom Chapter of Part 18 applies, complies with the obligations referred to in subparagraph (i), other than the obligations referred to in paragraphs (a) and (b) of subsection (1) of section 530G or 530H,*
>
> *(b)who has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section, and*
>
> *(c)who provides to the Revenue Commissioners -*
>
> > *(i)details of qualifying residences which the contractor offers, or proposes to offer, for sale within the qualifying period,*

(ii)details of any planning permission under the Planning and Development Acts 2000 to 2015 in respect of the qualifying residences referred to in subparagraph (i),

(iii)details of the freehold or leasehold estate or interest in the land on which the qualifying residences referred to in subparagraph (i) are constructed or to be constructed, and

(iv)any other relevant information that may be required by the Revenue Commissioners for the purposes of registration of a person as a qualifying contractor.

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

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

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

that individual may make a claim for an appropriate payment.

(4)On the making of a claim by an individual referred to in subsection (3), a payment (in this section referred to as an 'appropriate payment') shall, subject to the provisions of this section, be made in accordance with subsection (16).

(5)

(a)An appropriate payment in relation to a qualifying residence or a self-build qualifying residence under this section shall not be greater than whichever of the amounts referred to in the following subparagraphs is the lesser, namely:

(i)the amount of €20,000,

(ii)the amount of income tax payable and paid by the claimant in respect of the 4 tax years immediately preceding the year in which an application is made under subsection (6), or

(iii)the amount equal to 5 per cent of the purchase value of the qualifying residence or self-build qualifying residence, as the case may be.

(b)In paragraph (a)(ii), income tax paid shall include any amount of appropriate tax which has, in accordance with section 257 and 267AA, been deducted from payments of relevant interest made to the claimant in the 4 tax years immediately preceding the year in which an application is made under subsection (6).

(c)The amount of appropriate tax referred to in paragraph (b) shall be reduced by the amount of any appropriate tax repaid to the claimant undersection 266A.

(d)Notwithstanding Chapter 1 of Parts 44 and 44A, where section 1017 or 1031C applied in respect of a tax year, the amount of income tax paid by a claimant, for the purposes of paragraph (a)(ii) shall be determined by the following formula -

$$\frac{A \times C}{B}$$

where -

A is the amount of the total income (if any) of the claimant for the tax year,

B is the sum of the amount of the total income (if any) of the claimant and the amount of the total income (if any) of the claimant's spouse or civil partner, and

C is the amount of income tax paid for the tax year.

(e)An appropriate payment under this section shall be made -

(i)in the first instance as a refund of income tax paid by the claimant in respect of the earliest relevant tax year and followed by each succeeding relevant tax year, and

(ii)thereafter as a refund of the amount of appropriate tax paid by the claimant in respect of the earliest relevant tax year and followed by each succeeding relevant tax year.

(5A)Where an individual has, in that part of the qualifying period beginning on 23 July 2020 and ending on 31 December 2021, either -

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

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

paragraph (a) of subsection (5) shall apply subject to the following modifications:

(i)in subparagraph (i) of that paragraph, '€30,000' shall be substituted for '€20,000';

(ii)in subparagraph (iii) of that paragraph, '10 per cent' shall be substituted for '5 per cent'.

(6)

(a)Prior to submitting a claim under subsection (3), an individual shall make an application to the Revenue Commissioners which shall include -

(i)an indication that he or she intends to make a claim under this section,

(ii)his or her name and PPS number, and

(iii)confirmation by the individual, where such is the case, that the conditions specified in paragraph (b) have been met.

(b)The conditions referred to in paragraph (a)(iii) are that -

(i)he or she is a first-time purchaser,

(ii)where the individual is a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a tax year within the 4 tax years immediately preceding the year in which the application is made, he or she has complied with the requirements of that Part or, as appropriate, those Parts and has paid the amount of income tax payable and of universal social charge (within the meaning of Part 18D) which he or she is liable to pay, in respect of each such tax year,

(iii)where the individual is not a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a relevant tax year, he or she has made a return of income, in such form as the Revenue Commissioners may require, and has paid the amount of income tax payable and of universal social charge which he or she is liable to pay, in respect of each such relevant tax year, and

(iv)in the case of an individual to which subparagraph (ii) refers, he or she has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section.

(c)Where section 1017 or 1031C applied in respect of a tax year, the individual who must meet the conditions referred to in subparagraphs (ii) and (iii) of paragraph (b) shall be the person assessed to tax under section 1017 or the nominated civil partner within the meaning of section 1031A.

(7)For the purposes of subsections (5)(a)(ii) and (6)(b)(ii) and (iii) -

(a)

(i)an individual may elect to be deemed to have made his or her application under subsection (6) in the tax year 2016 where, in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into between the applicant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the applicant, provided the application is made on or before 31 March 2017, or

(ii)an individual may elect to be deemed to have made his or her application under subsection (6) in the tax year 2016 where, in the period commencing on 1 January 2017 and ending on 31 March 2017, a contract referred to in subsection (3)(a) is entered into between the applicant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the applicant, provided the application is made on or before 31 May 2017,

and where an individual so elects, the application shall be deemed to have been made in the tax year 2016 and the corresponding claim under subsection (3), where it is made in the tax year 2017, shall be deemed to have been made in the tax year 2016,

(b)notwithstanding the obligation on an individual under paragraph (a)(i) to, as appropriate, make an application on or before 31 March 2017, where such an individual makes an application under subsection (6) in 2018 or 2019, the application shall be deemed to have been made in the tax year 2017, and the

corresponding claim under subsection (3) shall be deemed to have been made in the tax year 2017.

(8)

(a)An application made in any tax year shall cease to be valid on the earlier of the following events:

(i)failure by the applicant to satisfy the conditions specified in subsection (6)(b);

(ii)on the rescission of the applicant's tax clearance certificate in accordance with subsection (3A) of section 1095; or

(iii)on the falling of 31 December in the tax year in which the application is made.

(b)Notwithstanding paragraph (a) and subsection (25), where an application is made under this section in the period commencing on 1 October and ending on 31 December in any of the tax years 2017 to 2021 (hereafter in this paragraph referred to as the 'first-mentioned period'), and the corresponding claim is made under subsection (3) in the period commencing on 1 January and ending on 31 March of the following year, the applicant shall be deemed to have made his or her claim in the first-mentioned period.

(c)No claim may be made on foot of an application which ceases to be valid in accordance with paragraph (a).

(9)Where an application is made under this section and more than one individual is a party to the application, each such individual shall -

(a)confirm that he or she is a first-time purchaser,

(b)satisfy the conditions specified in subsection (6)(b),

(c)consent to provide to the other parties his or her name, address and PPS number, and

(d)agree with each of the other parties as to the allocation between the parties of the amount of the appropriate payment and notify the Revenue Commissioners of such allocation.

(10)Subject to the conditions specified in subsection (6)(b) being satisfied, the Revenue Commissioners shall notify the applicant of the maximum appropriate

payment that would, following the making of a claim under this section, be available to or in respect of the applicant.

(11)The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.

(12)

(a)On making a claim under subsection (3), where the qualifying residence is other than a self-build qualifying residence, the claimant shall provide to the Revenue Commissioners -

(i)his or her name and PPS number,

(ii)the address of the qualifying residence,

(iii)the purchase value of the qualifying residence,

(iv)details of the qualifying lender,

(v)confirmation that a qualifying loan has been entered into,

(vi)the qualifying loan application number or reference number used by the qualifying lender,

(vii)the amount of the qualifying loan,

(viii)evidence of the qualifying loan entered into,

(ix)evidence of the contract entered into with a qualifying contractor,

(x)the amount of deposit payable by the claimant to the qualifying contractor,

(xi)the amount, if any, of deposit paid by the claimant to the qualifying contractor,

(xii)confirmation that, on its completion, the qualifying residence will be occupied by the claimant as his or her only or main residence, and

(xiii)in the case of a claimant referred to in subsection (16)(a)(i), details of the claimant's bank account to which the appropriate payment shall, subject to the qualifying contractor having satisfied the requirements of subsection (13), be made.

(b)A claimant shall satisfy himself or herself that the contractor is a qualifying contractor.

(13)Following the making of a claim in accordance with subsection (12), the qualifying contractor shall provide to the Revenue Commissioners -

(a)the contractor's name,

(b)the contractor's tax reference number and VAT registration number,

(c)the name of the claimant,

(d)the address of the qualifying residence,

(e)the purchase value of the qualifying residence,

(f)the amount of deposit payable by the claimant to the qualifying contractor,

(g)the amount, if any, of deposit paid by the claimant to the qualifying contractor, and

(h)in the case of a contract to which subsection (16)(a)(ii) applies, details of the qualifying contractor's bank account.

(14)On making a claim under subsection (3) in the case of a self-build qualifying residence, the claimant shall provide to the Revenue Commissioners -

(a)his or her name and PPS number,

(b)the address of the self-build qualifying residence,

(c)the purchase value of the self-build qualifying residence,

(d)details of the qualifying lender,

(e)confirmation that a qualifying loan has been entered into,

(f)the amount of the qualifying loan,

(g)confirmation that, on its completion, the self-build qualifying residence will be occupied by the claimant as his or her only or main residence, and

(h)details of the qualifying loan bank account to which the appropriate payment shall, subject to a solicitor, acting on behalf of the claimant, having satisfied the requirements of subsection (15), be made.

(15)Following the making of a claim in accordance with subsection (14), a solicitor, acting on behalf of the claimant, shall provide to the Revenue Commissioners -

(a)the name of the claimant,

(b)the address of the self-build qualifying residence,

(c)evidence of the qualifying loan entered into between the claimant and the qualifying lender,

(d)evidence of the drawdown of the first tranche of the qualifying loan, and

(e)confirmation of the purchase value of the self-build qualifying residence.

(16)

(a)Subject to the provisions of this section, the appropriate payment shall be made by the Revenue Commissioners -

(i)where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into between the claimant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's bank account,

(ii)where in the period commencing on 1 January 2017 and ending on 31 December 2021, a contract referred to in subsection (3)(a) is entered into between the claimant and a qualifying contractor, to the qualifying contractor's bank account, or

(iii)where in the period commencing on 1 January 2017 and ending on 31 December 2021, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's qualifying loan bank account.

(b)Where the appropriate payment is made in respect of a claimant to a qualifying contractor referred to in paragraph (a)(ii), the contractor shall treat the appropriate payment as a credit against the purchase price of the qualifying residence.

(c)Where paragraph (a)(ii) applies, the claimant shall consent to the appropriate payment in respect of him or her being paid by the Revenue Commissioners to the qualifying contractor.

(17)

(a)On its completion, a qualifying residence or a self-build qualifying residence shall be occupied by the claimant as his or her only or main residence.

(b)

(i)Where an appropriate payment is made on foot of a claim under this section, and the qualifying residence or self-build qualifying residence ceases to be occupied -

(I)by the claimant, or

(II)where more than one individual is a party to the claim, by all of those individuals,

within 5 years from occupation of the residence, the claimant shall notify the Revenue Commissioners and, in accordance with subparagraph (ii), pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or the lesser percentage there specified of the amount of the appropriate payment.

(ii)Where the residence ceases to be occupied as mentioned in subparagraph (i) -

(I)within the first year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment,

(II)within the second year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 80 per cent of the amount of the appropriate payment,

(III)within the third year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 60 per cent of the amount of the appropriate payment ,

(IV)within the fourth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied,

pay to the Revenue Commissioners an amount equal to 40 per cent of the amount of the appropriate payment, or

(V)within the fifth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 20 per cent of the amount of the appropriate payment.

(18)

(a)Where -

(i)arising from a claim under this section, an appropriate payment is made to, or in respect of, a claimant, and

(ii)any condition that imposes a qualification, as respects the claimant, in relation to the making of an appropriate payment under this section is not satisfied by the claimant,

the claimant shall, within 3 months from the date on which the appropriate payment is made, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or part of such an amount, as appropriate.

(b)

(i)Where, arising from a claim under this section in respect of a self-build qualifying residence, an appropriate payment is made to an individual, the individual shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment -

(I)where the self-build qualifying residence is not completed within 2 years from the date on which the appropriate payment was made by the Revenue Commissioners, or

(II)if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the self-build qualifying residence will not be completed within that period.

(ii)Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the individual to the

effect that they had formed an opinion in accordance with clause (II) of that subparagraph.

(c)

(i)Where arising from a claim under this section, other than a claim to which paragraph (b) refers, an appropriate payment is made directly to an individual (who is not a qualifying contractor), the individual shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment -

(I)if the qualifying residence is not subsequently purchased by the individual within 2 years from the date on which the appropriate payment was made by the Revenue Commissioners, or

(II)if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within that period.

(ii)Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the individual to the effect that they had formed an opinion in accordance with clause (II) of that subparagraph.

(d)

(i)Where, arising from a claim under this section, an appropriate payment claimed by an individual is made to a qualifying contractor under subsection (16)(a)(ii), and -

(I)the qualifying residence is not subsequently purchased by the individual within 2 years from the date of the making of the appropriate payment by the Revenue Commissioners, or

(II)if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within that period,

the qualifying contractor shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment.

(ii)Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the qualifying contractor to the effect that they had formed an opinion in accordance with clause (II) of that subparagraph.

(e)For the purposes of paragraph (d), an individual referred to in that paragraph may notify the Revenue Commissioners where he or she has reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within the 2 year period referred to in that paragraph.

(f)Where the Revenue Commissioners are satisfied that a qualifying residence or self-build qualifying residence -

(i)is substantially complete at the end of the 2 year period referred to in paragraph (b), (c) or (d), and

(ii)is likely to be completed thereafter within a period of time that, in the opinion of the Revenue Commissioners, is a reasonable one (and such opinion shall be communicated to the person concerned),

the aforementioned 2 year period shall, for the purposes of those paragraphs, stand extended by the period referred to in subparagraph (ii).

(19)Where more than one individual is a party to a claim under this section and a liability arises under subsection (17) or (18) in respect of payment to the Revenue Commissioners of an amount equal to the amount of the appropriate payment, or part of such an amount, each party to the claim shall be liable jointly and severally.

(20)

(a)Where a person who is liable to pay to the Revenue Commissioners an amount referred to in subsection (17)(b) or paragraph (a), (b), (c) or (d) of subsection (18) fails to pay that amount, a Revenue officer may, at any time, make an assessment or an amended assessment on that person for a year of assessment or accounting period, as the case may be, in an amount that,

according to the best of that officer's judgement, ought to be charged on that person.

(b)A person aggrieved by an assessment or an amended assessment made on that person under this subsection may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment or amended assessment.

(c)Where in accordance with paragraph (a), a Revenue officer makes an assessment or an amended assessment on a person in an amount that, according to the best of that officer's judgement, ought to be charged on that person, the amount so charged shall, for the purposes of paragraph (a) and Part 42, be deemed to be tax due and payable in respect of the tax year in which the person is liable to pay the amount involved and shall carry interest as determined in accordance with subsection (2) of section 1080 as if a reference in that subsection to the date when the tax became due and payable were a reference to the date the amount so charged is, under this section, payable to the Revenue Commissioners.

(d)Any liability to pay an amount to which paragraph (a) applies, including any interest thereon, which is due and unpaid by a qualifying contractor under this section shall be and remain a charge on the freehold or leasehold estate or interest in the land on which the qualifying residence was to be constructed, where the contractor retains such estate or interest in the land.

(e)Notwithstanding section 36 of the Statute of Limitations 1957, the charge referred to in paragraph (d) shall continue to apply, without limit as to time, until such time as it is paid in full.

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

(22)Anything required to be done by or under this section by the Revenue Commissioners may be done by any Revenue officer.

(23)Any application, claim, information, confirmation, declaration or documentation required by this section shall be given by electronic means and through such electronic systems as the Revenue Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 shall apply.

(24)Section 1021 shall not apply where an appropriate payment is made under this section.

(25)No application or claim may be made under this section after 31 December 2021.