AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

74TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This determination concerns an appeal to the Tax Appeals Commission ("the Commission") by the Appellant against an income tax assessment raised by the Respondent in the amount of €12,500.

2. The assessment under appeal relates to a clawback equal to 100 per cent of the Help-to-Buy ("HTB") relief granted to the Appellant. The Appellant contends that the tax assessed is not payable.

3. The appeal proceeded by way of a hearing held in private. The Appellant appeared without legal representation, and the Respondent was represented by two of its officers.

Background

4. HTB relief assists taxpayers in funding the purchase of their first home or, in the case of self-builds, their construction.

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

6. The Appellant resides in Northern Ireland but works and is liable to income tax in the State.

7. In August 2017, the Appellant enquired of the Respondent whether he was eligible for HTB relief if he self-built a house in Northern Ireland. In reply, the Respondent stated that such a property would not qualify for HTB relief as its construction would not be subject to Irish value-added tax ("VAT").

8. The Appellant again enquired of the Respondent as to the position, noting that he had received conflicting information in a telephone call with an officer of the Respondent. The Respondent's position remained unchanged; houses built outside the State would not qualify for HTB relief.

9. In November 2017, the Appellant initiated a claim for HTB relief in respect of the construction of a self-build residence at [redacted] Republic of Ireland ("the Subject Property").

10. The Appellant declared a qualifying loan amount of €175,000 and a purchase price of €250,000, thereby giving a loan-to-value ("LTV") ratio of 70 per cent.

11. The Respondent approved the claim and remitted €12,500 to the Appellant's bank account.

12. In February 2025, the Respondent notified the Appellant that he had been selected to self-review his position in respect of local property tax ("LPT") for the Subject Property. In response, the Appellant queried whether there had been a mistake on the Respondent's part as the Subject Property is situated in Northern Ireland. The Respondent informed the Appellant that the Subject Property was not subject to LPT, as it was situated outside the State.

13. In May 2025, the Respondent notified the Appellant that he had been selected for a risk review in respect of the HTB claim associated with the Subject Property.

14. As part of his response to the risk review, the Appellant stated that the Subject Property's address was [redacted] Northern Ireland.

15. In July 2025, the Respondent informed the Appellant that it had been determined that he was not eligible for HTB relief on the basis that the property was situated in Northern Ireland and the LTV ratio had not been met.

16. By correspondence dated 24 July 2025, the Respondent notified the Appellant that he had been assessed to a clawback of HTB relief in the sum of €12,500, being 100 per cent of the HTB relief granted to the Appellant in 2017.

17. The Appellant appealed to the Commission on 31 July 2025.

18. The Appellant submitted a notice of appeal and accompanying documentation in support of his appeal. Each party submitted a statement of case, along with an outline of arguments.

Legislation

19. The legislation insofar as relevant to the substantive issues in this appeal, as in force at the material time, is set out below.

The TCA 1997

20. Section 477C(1) of the TCA 1997 provides, among other things, as follows:

> *"In this section –*
>
> *…*
>
> *'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) …

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

(iii) …

…

'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;

[…]"

21. Section 477C(3) of the TCA 1997 states as follows:

"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."

The VATCA 2010

22. Section 46(1)(c) of the VATCA 2010 provides as follows:

"subject to paragraph (ca), 13.5 per cent of the amount on which tax is chargeable in relation to goods or services of a kind specified in Schedule 3;"

23. Section 34 of the VATCA 2010 states, among other things, as follows:

"The following rules apply to determine the place where, for the purposes of this Act, services are supplied:

…

(c) if the supply of services is connected with immovable goods, or is the grant of a right to use those goods, the place where those goods are located;

[…]"

24. Paragraph (9)(1) of Schedule 3 to the VATCA 2010 provides that:

"Services consisting of the development of immovable goods, being private dwellings, and work on such immovable goods including the installation of fixtures, where the value of movable goods (if any) provided in pursuance of an agreement in relation to such services does not exceed two-thirds of the total amount on which tax is chargeable in respect of the agreement."

Evidence and Submissions

Appellant's oral evidence

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

26. The oral evidence given by the Appellant was consistent with the information contained in his notice of appeal and statement of case. The following extract appeared in the Appellant's notice of appeal and statement of case:

"I am a PAYE cross border worker, living in Northern Ireland and working in the Republic. In 2017 I started a new build house for myself in Northern Ireland and applied for the [HTB] scheme. The [HTB] application details were correctly submitted including Planning permission, Mortgage letters and all applicable documentation etc via a solicitor and due process was followed, clearly stating my PAYE tax situation, address in Northern Ireland and mortgage details for the self build.

In December 2017 [the Respondent's] internal processes determined that everything was in order with all aspects of the application including [LTV] percentage, VAT status and all other eligibility criteria was successfully met. [The Respondent] proceeded to approve the application and a payment confirmation of €12,500 was issued and paid that same month. This money was used as intended to complete the self built [redacted] *in Northern Ireland* [redacted]

In May 2025 I received correspondence from [the Respondent] of a level 2 compliance risk review to which all required documentation requested was supplied via [the Respondent's] online […] portal - this document was the original mortgage offer as used in the application ... This resulted in further correspondence on the 24th July 2025 *informing me that I was not eligible for the HTB scheme, despite [the Respondent's] internal processes having check [sic] and approved the application in 2017. [The Respondent] not only want[s] to clawback the original payment of €12,500 but added fines and back dated interest pushing the total liability to €25,140.36 with payment due in 30 days."*

27. In addition, the Appellant's oral evidence included the following, incorporating relevant extracts from the transcript of the hearing:

    27.1. The Appellant stated that he had input the Subject Property's address as being in the State because the Respondent's system *"does not allow to put an address in the north of Ireland."*[1] In response, the Respondent stated that it *"… accepts addresses all over the world. It's just the [HTB] scheme doesn't because it's not eligible for Northern Ireland"*.[2]

    27.2. In response to a question asked by the Commissioner concerning the construction of the Subject Property, the Appellant stated as follows:

    > *"[redacted] put the foundations in [redacted] there was a delay in getting planning permission. [redacted] put the foundations in [redacted] to do the block laying and the subfloor foundations and [redacted] took that up to roof level. Then [redacted] the roofing construction. [redacted] electrician work and the plumbing. [redacted] Joinery [redacted] The tiling was actually done by [redacted]. So, yes, that's it. [redacted]"*[3]

[1] Transcript, page 18.
[2] Transcript, page 18.
[3] Transcript, pages 21 and 22.

Appellant's submissions

28. In his written outline of arguments, the Appellant submitted, among other things, as follows:

"GROUND 1 — LEGITIMATE EXPECTATION (PRIMARY ARGUMENT)

[The Respondent] created a clear, unambiguous representation

*The Appellant **fully disclosed** the Northern Ireland address. [The Respondent]:*

- *queried it,*
- *reviewed it,*
- *approved the application,*
- *issued payment.*

*This constitutes a clear and unambiguous representation that the Appellant was **eligible**.*

Appellant relied on this representation to his detriment

The Appellant proceeded to:

- *draw down a mortgage,*
- *complete construction,*
- *occupy the property* [redacted]*,*
- *make substantial financial commitments.*

…

Application to this case

[The Respondent] had all facts. Their approval was deliberate, reasoned, and final. The Appellant's reliance was substantial, direct, and irreversible.

The clawback violates legitimate expectation and must be set aside.

GROUND 2 — FINALITY OF ADMINISTRATIVE DECISIONS

*[The Respondent] made a **final administrative decision** in 2017.*

*No statutory provision authorises [the Respondent] to revisit such a decision **eight years later** when:*

- *the original decision was made with full knowledge;*
- *there was no misrepresentation;*
- *the taxpayer complied fully.*

Public law prohibits arbitrary reopening of final decisions.

GROUND 3 — ESTOPPEL AGAINST [the Respondent]

Where:

- *full disclosure is made, and*
- *[the Respondent] expressly approves a claim, and*
- *a taxpayer materially relies upon it,*

*[the Respondent] is **estopped** from reversing that position.*

…

GROUND 4 — DETRIMENTAL RELIANCE

A standalone ground supporting legitimate expectation.

The Appellant relied on [The Respondent's] approval by:

- *proceeding with the build,*
- *incurring construction expenses,*
- *committing to a mortgage,*
- *building his principal private residence.*
- *This reliance was reasonable and foreseeable.*

GROUND 5 — PROCEDURAL FAIRNESS AND NATURAL JUSTICE

Public bodies must act fairly and transparently. The eight-year delay, the absence of statutory timelines, and the complete reversal of an approved claim constitute procedural unfairness.

…

The Appellant was never told he remained under review. Eight years of silence is fundamentally unfair.

GROUND 6 — UNREASONABLE DELAY (8 YEARS)

[The Respondent] possessed all information in 2017.

The clawback in 2025 is:

- *retrospective,*
- *oppressive,*
- *contrary to fair procedures, and*
- *contrary to proportionality.*

…

Such a delay renders the clawback invalid.

GROUND 7 — PROPORTIONALITY

The clawback is disproportionate because:

- *There was no wrongdoing.*
- *Full disclosure was made.*
- *The Appellant complied with occupation & completion rules.*
- *[The Respondent] approved the relief after investigation.*

Proportionality is a constitutional principle …

[The Respondent's] action is far in excess of what is just, necessary, or fair.

GROUND 8 — EQUALITY & CONSISTENCY

[The Respondent] must treat like cases alike.

At the time:

- *No published [guidance by the Respondent] explicitly excluded NI properties.*
- *No known clawbacks were issued on NI location grounds.*
- *[The Respondent] accepted and approved the Appellant's claim despite awareness.*

The Appellant cannot be singled out retrospectively.

GROUND 9 — AMBIGUITY IN 2017 GUIDANCE

[The Respondent's] guidance at the time of the Appellant's application:

- *did **not** expressly exclude Northern Ireland;*
- *did **not** clearly link 'Irish VAT' to 'must be in the Republic';*
- *did **not** caution applicants from NI;*
- *was later updated to clarify that the property must be in the State.*

Subsequent clarifications cannot retrospectively impose new conditions.

GROUND 10 — VAT TREATMENT AND LOCATION

While [the Respondent] may argue that the property must be in the Republic, the Appellant submits:

- *Materials from Northern Ireland were treated as **intra-Community acquisitions** under Section 46(1)(c) [of the] VATCA 2010.*
- *Materials and services from Irish suppliers incurred Irish VAT. (Example invoices Section 4.3)*
- *The build attracted VAT in accordance with EU-aligned NI Protocol rules.*

This supports compliance in substance and purpose.

GROUND 11 — COMPLIANCE WITH LTV REQUIREMENT

[The Respondent's] claw back assessment cites non-compliance with the 70% [LTV] requirement. However, for self-builds, [the Respondent's] guidance specifies that the valuation should be used rather than the purchase price.

Using valuation as required for self-builds as documented in the Mortgage approval letter (Section 4.2 page 7)

- *Valuation:* ***£225,000***
- *Mortgage:* ***£172,000***
- *LTV: 76.44%*

This satisfies the statutory 70% requirement. [The Respondent's] reliance on an incorrect figure is factually erroneous." (Emphasis in original)

Respondent's submissions

29. The Respondent's written outline of arguments contains a summary of its submissions as follows:

> *"18. Documentation provided by the Appellant on their original application, a loan amount of £172,000 and a purchase price of £250,000 ... The loan-to-value ratio is 68.8 percent. The required minimum [LTV] ratio to qualify for the scheme is 70 percent.*
>
> *19. There are no circumstances where the place of supply of services connected with an immovable property located outside of the State would be in the State. The supply of services connected with an immovable property located outside the State will never be within the scope of Irish VAT. This essentially provides a territorial scope of the HTB scheme as any properties located outside the state will not come within the definition of a 'qualifying residence' as per Section 477C TCA 1997.*
>
> *20. The Respondent submits that this property did not meet the requirements of Section 477c of the TCA 1997 on two counts:*
>
> *1. The [LTV] ratio was below 70%.*
>
> *2. The property is situated in Northern Ireland and does not some [sic] within the scope of Irish VAT and does not come within the definition of a qualifying residence."*

Material Facts

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

    30.1. The Subject Property is situated outside the State.

    30.2. The Subject Property is a residential property.

    30.3. A supplier ("the First Supplier") with an address in the State was engaged to insulate the cavity walls of the Subject Property.

    30.4. The First Supplier applied Irish VAT at 13.5 per cent on its invoice, with a VAT amount of [redacted] stated on its invoice. [redacted] 2018 is stated on the invoice. The invoice is addressed to [redacted] with an address in Northern Ireland. It refers to the Appellant and the Subject Property with its address in Northern Ireland.

    30.5. The Appellant acquired materials, which included tiles, adhesive, grout, laminate flooring along with underlay, from a supplier ("the Second Supplier") with an address in the State.

    30.6. The Second Supplier charged Irish VAT at 23 per cent on its invoice dated [redacted] June 2018, with a VAT amount of [redacted] stated on its invoice. The invoice was addressed to the Appellant and his spouse, with reference to the Subject Property as being in Northern Ireland.

    30.7. On 9 November 2017, the Appellant initiated a claim for HTB relief in relation to the construction of the Subject Property in the amount of €12,500.

    30.8. In that claim, the Appellant declared that the Subject Property's address was [redacted] County Monaghan.

    30.9. By correspondence dated 24 July 2025, the Respondent notified the Appellant that he had been assessed to a clawback of HTB relief in the sum of €12,500.

    30.10. The Appellant appealed to the Commission on 31 July 2025.

Analysis

Burden of proof

31. The burden of proof in this appeal rests on the Appellant to establish that the tax assessed is not payable.

32. In *Menolly Homes Ltd v. Appeal Commissioners and Anor.* [2010] IEHC 49, Charleton J. stated at paragraph 22, among other things, that:

    "The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."

33. In *O'Sullivan v. The Revenue Commissioners* [2021] IEHC 118, Sanfey J. stated at paragraph 90, among other things, that:

    "The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer's position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by [the Respondent] and he would have to justify his position."

34. Additionally, 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. The court stated, among other things, that:

    "97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. …

    98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; … Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation. …"

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

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

The Commissioner's jurisdiction

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

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

39. The Court of Appeal's judgment in *Lee v. The Revenue Commissioners* [2021] IECA 18 ("*Lee*") is authoritative as to the Commission's jurisdiction. In *Lee*, Murray J. stated at paragraph 20, among other things, that:

> *"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by [the TCA 1997], 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 1997] or must arise by necessary implication from the terms of that legislation."*

40. While *Lee* concerned assessments raised before the enactment of the Finance (Tax Appeals) Act 2015, and the statutory analysis was therefore based on the older legislation, Part 40 of the TCA 1997, the overarching analysis of Murray J. is applicable to Part 40A of the TCA 1997. This was confirmed in *Express Motor Assessors Limited (in liquidation) v. The Revenue Commissioners* [2021] IEHC 420 ("*Express Motor Assessors Limited*").

41. In *Express Motor Assessors Limited*, Stack J. stated at paragraph 32, among other things, that:

> *"The jurisdiction being exercised by the Appeals Commissioner under s.949AK and 949AL [of the TCA 1997], therefore, does not appear to differ in substance from that considered by the Court of Appeal in [Lee], and that judgment is therefore applicable to this case."*

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

"The jurisdiction of the Appeal Commissioners … under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal … is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of [the TCA 1997] may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the Respondent has] acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

43. It is clear that no issue of European law arises in this case.

44. It follows from the judgment in *Lee* that the Commissioner does not have jurisdiction to provide equitable relief or public law remedies. He does not have jurisdiction to adjudicate upon, among other things, an alleged breach of legitimate expectation in this appeal.

45. The Commissioner's role is confined to considering whether the assessment under appeal correctly charges the Appellant to tax in accordance with the provisions of section 477C of the TCA 1997, having regard to the grounds of appeal specified in the Appellant's notice of appeal. The Commissioner has no equitable power or wider discretion to modify or disapply statutory provisions.

The Appellant's grounds of appeal

46. Section 949I(6) of the TCA 1997 provides as follows:

"A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice."

47. This provision is in mandatory terms and prohibits the Appellant from relying on any ground of appeal not specified in his notice of appeal unless the Commissioner is satisfied that such ground could not reasonably have been stated in that notice.

48. Having regard to the Appellant's notice of appeal, the Commissioner is satisfied that grounds 1 (legitimate expectation), 10 (VAT treatment and location) and 11 (compliance with LTV requirement) contained in his outline of arguments were specified in his notice of appeal.

49. As outlined above, the Commissioner does not have jurisdiction to adjudicate upon any alleged breach of legitimate expectation in this appeal. Accordingly, this determination does not consider whether the Appellant had a legitimate expectation arising from the Respondent's approval of his HTB claim in 2017.

50. The remaining grounds included in the Appellant's outline of arguments were not specified in his notice of appeal, and the Commissioner is not satisfied that such grounds could not reasonably have been stated in that notice. In any event, save for whether the assessment was made out of time, in line with the judgment in *Lee*, the other matters are not within the jurisdiction of the Commissioner. Consequently, this determination does not address them.

Whether the Subject Property is a self-build qualifying residence

51. In accordance with section 477C of the TCA 1997, for an individual to avail of HTB relief in respect of a self-build, that property must come within the meaning of a *"self-build qualifying residence"*.

52. Pursuant to section 477C(1) of the TCA 1997, the meaning attributed to *"self-build qualifying residence"* is *"a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf"*.

53. Section 477C(1) of the TCA 1997 provides, among other things, as follows:

> *"In this section –*
>
> *…*
>
> *'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) …

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

(iii) …

[…]"

54. The rate of VAT specified in section 46(1)(c) of the VATCA 2010 is 13.5 per cent.

55. Accordingly, for the Subject Property to come within the meaning of a *"qualifying residence"*, *"the construction work"* must have been *"subject to"* Irish VAT at the rate of 13.5 per cent. The term *"construction work"* is not defined for the purposes of section 477C of the TCA 1997.

56. It is clear from the line of recent authority, including the Supreme Court judgments in *The People (DPP) v. Brown* [2018] IESC 67 (*"Brown"*), *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 (*"Dunnes"*), *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60 (*"Bookfinders"*), *Heather Hill Management Company CLG and Anor. v. An Bord Pleanála* [2022] IESC 43 (*"Heather Hill"*) and *Hanrahan*, that the starting point of an interpretative exercise in an appeal of this nature is to consider the ordinary and natural meaning of the wording itself, viewed in context.

57. In support of this appeal, the Appellant provided an invoice from the First Supplier relating to the insulation of the Subject Property's cavity walls, on which Irish VAT at the rate of 13.5 per cent was charged by that supplier.

58. The Appellant did not adduce any other evidence to support the contention that the construction work associated with the Subject Property was subject to Irish VAT at the rate of 13.5 per cent.

59. The Commissioner accepts that the provision and injection of cavity wall insulation comes within the meaning of *"construction work".* However, that finding does not of itself mean that it *"is subject to the rate of tax specified in section 46(1)(c) of [the VATCA 2010]"*.

60. On the proper construction of the expression *"the construction work is subject to the rate of tax specified in section 46(1)(c) of [the VATCA 2010]"*, what matters is the effect of the provisions of the VATCA 2010, not the treatment applied by a supplier.

61. In accordance with section 34(c) of the VATCA 2010, the place of supply of services connected with immovable goods is where those goods are located.

62. The Commissioner is satisfied that the provision and injection of cavity wall insulation by the First Supplier is connected with the Subject Property, which is an immovable good. That being so, as the Subject Property is situated outside the State, the place of supply is not the State. Therefore, in accordance with the provisions of the VATCA 2010, a charge to Irish VAT does not arise.

63. It follows from the above that the provision and injection of cavity wall insulation by the First Supplier was not *"subject to"* the 13.5 per cent rate of Irish VAT. This remains the position where that rate has been applied erroneously.

64. Even if the Commissioner had concluded that the supply was subject to the 13.5 per cent rate of Irish VAT, he would not have regarded that as sufficient to establish that the construction work associated with the Subject Property was subject to that rate of Irish VAT.

65. The Commissioner has considered the VAT treatment applied by the Second Supplier in respect of the materials supplied to the Appellant. The Second Supplier charged Irish VAT at the rate of 23 per cent on its invoice. The Commissioner is satisfied that the Second Supplier was correct not to charge Irish VAT at the rate of 13.5 per cent, as the supplies were not subject to that rate under the provisions of the VATCA 2010.

66. The Respondent contends that the effect of the meaning of a *"qualifying residence" "essentially provides a territorial scope of the HTB scheme as any properties located outside the state will not come within the definition of a 'qualifying residence' as per Section 477C [of the] TCA 1997."*

67. That contention has force. However, on the facts of this case, it is unnecessary to consider whether any exception could arise.

68. The Commissioner has concluded that *"the construction work"* in respect of the Subject Property was not *"subject to the rate of tax specified in section 46(1)(c) of [the VATCA 2010]"*. Therefore, the Subject Property is not a *"qualifying residence"* for the purposes of section 477C(1) of the TCA 1997. That finding is dispositive of the appeal.

69. Even if the Appellant were correct in respect of the dispute concerning the valuation of the Subject Property that, at the time the qualifying loan was entered into, was approved by the bank, it would not affect the outcome of this appeal. Therefore, it is not necessary to consider the LTV matter.

70. The Commissioner recognises that this determination will be disappointing for the Appellant. The Appellant was entitled to bring this appeal and to seek a determination of the matter. The Commissioner is, however, bound to apply the provisions of the legislation.

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

Determination

72. Having considered the evidence adduced and all the material submitted by the parties, for the reasons set out above, the Commissioner determines that the Appellant has not shown that the tax assessed is not payable.

73. The Respondent's assessment in the sum of €12,500 shall stand.

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

Notification

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

Appeal

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

Conor Walsh
Appeal Commissioner
22 May 2026