



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

38TACD2026

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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acknowledged as valid by that authority on the same date, construction of a residential dwelling commenced on the Site on 25 January 2024. Whilst a copy of the Commencement Notice itself has not been submitted to the Commission, a copy of the local building control authority's acknowledgement of the Commencement Notice as valid, dated [REDACTED], was submitted as part of the additional documentation received by the Commission from the Respondent on 13 November 2025.

7. On 19 April 2025, the Appellant lodged a SD repayment claim via the eRepayments facility on the Respondent's Revenue Online Service ("ROS") pursuant to section 83D of the SDCA 1999. Section 83D of the SDCA 1999, Repayment of stamp duty where land used for residential development, provides for a repayment of SD paid on an instrument in relation to land that is conveyed or transferred by the instrument in certain circumstances where construction operations, in relation to a residential development on the land, commence pursuant to a commencement notice within the period of thirty months following the date of execution of the instrument.
8. On 23 April 2025, the Respondent contacted the Appellant stating that the documentation filed by the Appellant on ROS was incomplete and listing the information that was required from the Appellant in order to complete the SD repayment claim.
9. On 13 May 2025, after experiencing difficulties with uploading documents via the eRepayments facility on ROS, the Appellant submitted the SD repayment claim by delivering the documents by hand to the Respondent's office [REDACTED].
10. On 14 May 2025, the Respondent emailed the Appellant, via the Respondent's MyEnquiries service ("MyEnquiries"), stating that the repayment claim must be made via the eRepayments system online on ROS or on the Respondent's MyAccount service ("MyAccount"). The email outlined the steps required to access the eRepayments system online.
11. On 15 May 2025, the Appellant replied to the Respondent's email, via MyEnquiries, stating the hard copy documentation had been submitted at the Respondent's office [REDACTED] as the Appellant had been unable to upload the documentation required to the eRepayments system.
12. On 16 May 2025, the Respondent emailed the Appellant via MyEnquiries, stating:

"[...] The only way to apply is online. If you follow the instructions in [the Respondent's email of 14 May 2025] you should be able to do it online. If not, you can ask the person who filed the Stamp Duty return for you to do it on your behalf. [...]"

13. Between 16 May 2025 and 9 June 2025, the SD repayment claim was submitted by the Appellant on ROS and rejected by the Respondent a number of times due to the incomplete documentation accompanying the application and discrepancies between the information declared on the original SD return and the information declared on the SD repayment claim.
14. On 9 June 2025, the Appellant filed a complete SD repayment claim with the Respondent via the eRepayments system on ROS. The documentation submitted by the Appellant included confirmation that construction operations commenced on the Site on 25 January 2024. On the basis that the construction operations had commenced outside the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999, the repayment claim was rejected by the Respondent.
15. On 17 June 2025, the Respondent's caseworker and the Appellant spoke over the telephone and, during that call, the Appellant outlined the difficulties ■■■■ faced during the period since the Site had been purchased including personal, financial and health difficulties and delays in the commencement of construction due to the Covid-19 pandemic. The caseworker requested the Appellant to submit supporting documentation via MyEnquiries for consideration by the Respondent.
16. On 3 July 2025, the Appellant submitted a letter from a solicitor, dated 20 June 2025, to the Respondent via MyEnquiries. The solicitor's letter confirmed the Appellant's difficult personal, financial and health circumstances and requested the Respondent look favourably on the Appellant's SD repayment claim.
17. On 22 July 2025, the Respondent emailed the Appellant via MyEnquiries stating that the Appellant's case had been reviewed and confirming the SD repayment claim was refused. The reason provided by the Respondent at this time was that the claim was made outside the statutory four-year time limit laid down in section 159A of the SDCA 1999. The Respondent stated the following in its email to the Appellant:

"[...] Management have reviewed the details of this case and, based on the dates provided, the claim must be rejected as it is outside the 4 year limit, see Section 159a below.

Date of Execution : 24/06/2021

Commencement Notice : [the number of the Commencement Notice]

Section 159A - Time limits for claiming a repayment of stamp duty.

This section restricts the repayment of stamp duty to a valid claim made within 4 years of the date of stamping of an instrument by [the Respondent], [...]. If there is a shorter time limit in any provision of the stamp duty code [...], that time limit will continue to apply. [...]

18. On 24 July 2025, the Respondent emailed the Appellant via MyEnquiries stating:

"[...] Please be advised that I had sent an email to you on 22/07/2025 informing you of [MyEnquiries document ID number] being rejected by higher management as your S83D claim was made outside of the 4 year limit. [...]"

19. On 24 July 2025, the Appellant emailed the Respondent via My Enquiries expressing disappointment at the Respondent's refusal of the SD repayment claim and requesting that the Respondent make an exception in this case due to the Appellant's difficult personal circumstances.

20. On 6 August 2025, the Appellant emailed the Respondent, via MyEnquiries, requesting the SD repayment claim be granted and outlining personal, financial and health difficulties.

21. On 7 August 2025, the Respondent emailed the Appellant, via MyEnquiries, empathising with the Appellant's difficulties and stating, among other things:

"[...] however your refund request [...] is rejected as the claim is outside the required time limit of 4 years."

22. On 21 August 2025, the Appellant emailed the Respondent, via MyEnquiries, attaching a doctor's letter regarding the Appellant's health issues, and requesting an exception be made to the statutory time limit. The doctor's letter, dated [REDACTED], confirmed the Appellant's health difficulties.

23. On 22 August 2025, the Respondent emailed the Appellant stating, among other things:

"As advised previously, this case has been reviewed in detail [...] and unfortunately the decision to reject your claim stands."

24. On 31 August 2025, the Appellant lodged [REDACTED] Notice of Appeal with the Commission.

25. On 11 September 2025, the Respondent emailed the Appellant, via MyEnquiries stating it had made an error in relation to the statutory time limit applicable. In this email, the Respondent stated, among other things:

“Please be advised that in our email issued to you on 22/07/2025, we had stated that management had rejected the claim on the basis that the claim was made outside of the 4 year limit and we had quoted from the Section 159A legislation.

This was an error on our part as the claim had been rejected Under Section 83D [SDCA 1999], Subsection (3)(a) which provides that Stamp Duty paid on an instrument in relation to land is to be repaid where, within the 30-month period following the date of execution of the instrument, construction operations on the land commence pursuant to a commencement notice. In this case, the 30 month deadline was not met.

Apologies for the confusion in this matter. However, please be advised that [the Respondent’s] decision to refuse your S83D refund still stands.”

26. On 17 September 2025, the Appellant emailed the Respondent, via MyEnquiries, stating [REDACTED] intention to continue with the appeal and expressing disappointment with the outcome of the SD repayment claim. The Appellant referred to unfairness in the process and requested a review of the case by the Respondent’s senior management.

27. On 18 September 2025, the Respondent emailed the Appellant, via MyEnquiries, stating:

“[...] management [are] aware of your email and they have instructed me to tell you that [the Respondent’s] decision still stands.”

Legislation and Guidelines

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

“(1)

(a) In this section –

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

[...]

“commencement notice” means -

(a) a commencement notice within the meaning of article 8, or

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

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

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

"dwelling unit" means -

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

[...]

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

[...]

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

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

- (b) References in this section to "relevant residential development" shall be construed –*
 - (i) in a case in which a claim for a repayment under subsection (8) is, pursuant to subsection (7)(b), made in respect of such of the construction operations as for the time being are being carried out pursuant to a particular commencement notice, as references to the residential development that comprises those construction operations, or*
 - (ii) in either –*

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

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

as references to the entire of the residential development concerned.

[...]

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

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

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

(3)

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

[...]

[...]

(5)

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

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

[...]

is prevented by -

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

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

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

[...]

(6)

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

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

where-

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

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

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

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

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

(7)

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

(b) *If the residential development concerned is carried out in a phased manner such that there are 2 or more commencement notices in respect of the construction operations on the land, subsection (8) shall,*

without prejudice to the accountable person's right to defer making a claim until completion of the residential development concerned, be construed as enabling a claim to be made in respect of such of the construction operations as for the time being are being carried out pursuant to a particular commencement notice.

- (8) *A claim for a repayment under this section shall -*
- (a) *be made by an accountable person,*
 - (b) *without prejudice to paragraph (d), be made in a form and manner specified by the Commissioners,*
 - (c) *include a declaration, in such form as the Commissioners specify, stating -*
 - (i) *that the condition specified in subsection (3)(a) has been satisfied, [...]*
- [...]*
- (d) *be made by electronic means and through such electronic systems as the Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 shall apply,*
 - (e) *not be made until such time as construction operations have commenced pursuant to a commencement notice.*
- (9) *For the purposes of satisfying themselves that [...] the conditions for the making of a repayment under this section [...] are satisfied, the Commissioners may specify documents and particulars to be submitted by an accountable person, including the following:*
- (a) *a copy of any commencement notice;*
 - (b) *a copy of any acknowledgement sent by a building control authority in accordance with article 10(2) or 20A(3)(b), as the case may be, of the Regulations of 1997;*
 - (c) *a copy of any planning permission;*
 - (d) *the number and gross floor space of dwelling units constructed; and*
 - (e) *the area of the land expressed in hectares.*

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

(a) *be made by the Commissioners pursuant to a claim made in accordance with subsection (8),*

(b) *not carry interest, and*

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

(11)

(a) *Where the Commissioners are of the opinion that the requirements of this section have not been met in relation to a claim for repayment, they shall decide to refuse the claim and shall notify the claimant in writing of the decision and the reasons for it.*

(b) *An accountable person aggrieved by a decision to refuse a claim for repayment, may appeal to the Appeal Commissioners against the decision in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision.*

[...]

(18) *This section shall not apply to construction operations comprising relevant residential development commenced, pursuant to a commencement notice, after 31 December 2025”*

29. Section 159A of the SDCA 1999, General provisions on claims for repayment of stamp duty, provides for a four-year time limit for claiming repayments of SD where a shorter time limit is not provided by legislation. The section, as amended and applicable to this appeal, provides:

“(1) *In this section -*

[...]

‘repayment’ means a repayment of stamp duty including any –

- (a) *interest charged,*
- (b) *surcharge imposed, or*
- (c) *penalty incurred,*

in relation to stamp duty under any provision of this Act;

'valid claim' shall be construed in accordance with subsection (3).

(2) *The Commissioners shall not make a repayment to a person unless -*

- (a) *such repayment is provided for by this Act,*
- (b) *a valid claim has been made to them for that purpose, and*
- (c) *without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, the valid claim concerned has been made within the period of 4 years from, as the case may be -*

- (i) *in respect of an instrument stamped by the Commissioners, the latest date the instrument was required to be stamped under section 2,*

[...]

- (v) *the date of acknowledgement referred to in section 83D(10)(c) in relation to a relevant residential development within the meaning of that section,*

[...]

(3) *For the purposes of this section, a claim for repayment shall be treated as a valid claim where -*

- (a) *it is made in the form and manner specified (if any) by the provision, or provisions, of this Act under which such claim is made,*
- (b) *all information which the Commissioners may reasonably require to enable them to determine if, and to what extent, a repayment is due, has been furnished to them, [...]*

[...].

- (4) *Where the Commissioners determine that any of the requirements specified in subsection (2) or (3), as the case may be, have not been met in relation to a claim for repayment, they shall decide to refuse the claim for repayment and shall notify the claimant in writing of the decision and the reason or reasons for that decision.*
- (5) *Any person aggrieved by a decision of the Commissioners under subsection (4) to refuse a claim for repayment may appeal to the Appeal Commissioners against the decision in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of the notification of the decision.”*

30. The Respondent has issued guidance on the requirements for SD repayment claims under section 83D of the SDCA 1999. That guidance is set down within Part 07 of the Respondent’s Stamp Duty Manual, that part being entitled “Exemption and Reliefs from Stamp Duty”. Part 07 of the Stamp Duty Manual refers to SD exemptions and reliefs, and includes a section entitled “Part 7: Section 83D – Repayment of stamp duty where land used for residential development”¹ (hereinafter referred to as “the Relevant Manual”). At paragraph 7.2 of the Relevant Manual, entitled “Form and manner for making a claim”, the Respondent states:

“A repayment claim is to be made online through the eRepayments facility on ROS or myAccount. A step-by-step guide to submitting a repayment claim through the eRepayments facility is set out in Appendix 2.

[...]”

Appendix 2 of the Relevant Manual, entitled “Making a claim through ROS or myAccount”, sets out the steps required to complete and submit an eRepayment claim and includes screenshots of the relevant online pages on ROS and MyAccount.

Submissions

Appellant’s submissions

31. The Appellant’s Notice of Appeal stated, among other things, the following grounds of appeal:

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

“I had huge difficulty with this application [...] I need this exact amount to pay builders. I have had [personal difficulties], builders were off during COVID, then building costs increased, then had a problem with planning, my health came at me, I have been sick several times [...], I really need someone to please help me out with this. I have always paid my taxes, I have survived [personal difficulties], [...], I wasn't legible for any grants ie first time grants etc, i was depending on this stamp duty refund, I was only 16days late [...].

[...]

I know there are rules but I am appealing to you to please take my health problems etc into account here, my [...] health suffered after my [personal difficulties] and the aftermath of same. I just need someone to please help me out. [...].”

32. The Appellant's SoC provided additional information on the Appellant's personal, financial and health difficulties prior to and during the SD repayment claim process. The Appellant submitted that ■ encountered a number of problems in using the eRepayments system on ROS, including issues uploading the documentation in the required format onto the system. Separately, the Appellant submitted that, due to ■ financial difficulties the Appellant had made the SD repayment claim without the assistance of a tax agent.

Respondent's submissions

33. The Respondent's SoC stated:

[...]

Outline of relevant facts

[...]

2.5 On **19/04/2025** the Appellant submitted a Section 83D refund claim via the eRepayments system. The claim was for €7,699.33.

2.6 The claim underwent an initial review and some issues were identified, as follows:

- i. The uploaded Declaration was blank
- ii. There was a discrepancy between the footprint and curtilage figures declared on the claim and the land area on the Stamp Duty return

The caseworker wrote to the Appellant via eRepayments on 23/04/2025 requesting that these issues be addressed before the claim could be considered further.

- 2.7 On **13/05/2025** the Appellant delivered supporting documents, by hand, to [the Respondent's office ██████████]. These were received by [the NSDO²] on 14/05/2025.
- 2.8 On **14/05/2025** a message was sent to the Appellant via [MyEnquiries] advising that all Section 83D refund claims must be submitted through the eRepayments system, as specified in the legislation [the relevant subsection is s.83D(8)(d)]. There was some further correspondence over the following days regarding difficulties the Appellant was having uploading the documents to the claim.
- 2.9 Between 15/05/2025 and 09/06/2025 the claim was resubmitted to [the Respondent] and sent back to the Appellant multiple times due to issues such as incomplete documentation and discrepancies between information declared on the original Stamp Duty return and the Section 83D refund claim itself.
- 2.10 On **09/06/2025** a final version of the claim was submitted. The following relevant information was declared on the claim:
- i. Date of acknowledgement of Commencement Notice as valid:
██████████
 - ii. Commencement Notice No.: [the number of the Commencement Notice]
 - iii. Date construction started: 25/01/2024

The claim was accompanied by three supporting documents:

- iv. Section 83D Declaration for a Single Dwelling Unit – completed by [the Appellant]
- v. Section 83D Consent Form – completed by [the Appellant]
[...]
- vi. Acknowledgement (from [the local building control authority]) of [the Commencement Notice], as **Valid** and showing:

² The Respondent's National Stamp Duty Office

- Date received [REDACTED]
- Date entered onto Register [REDACTED]

2.11 This version of the claim then underwent a full review by the NSDO. The following was noted:

- i. Date of Execution – per Stamp Duty return **24/06/2021**
- ii. Deadline for construction to commence – per s.83D(3)(a) **24/12/2023**
- iii. Date of acknowledgement of Commencement Notice as valid – per s.83D refund claim and supporting document [REDACTED]
- iv. Date construction commenced – per s.83D refund claim **25/01/2024**

Based on the information provided, **construction commenced in excess of 30 months after the Date of Execution** of the instrument.

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

2.12 On **17/06/2025** the caseworker telephoned the Appellant (who had also made a call to the NSDO that morning) and advised that the refund request would have to be rejected if the Date of Execution and date of acknowledgement of the Commencement Notice were correct. The Appellant advised that [REDACTED] had been undergoing difficult personal circumstances and there had been building delays due to the Covid-19 pandemic that [REDACTED] could evidence. [REDACTED] was requested to submit any supporting documentation via MyEnquiries for consideration.

2.13 On **03/07/2025** the Appellant submitted a letter from [REDACTED] solicitor [...] confirming details of [REDACTED] circumstances and requesting leniency with regard to the decision on [REDACTED] Section 83D refund claim.

2.14 The additional information was reviewed, and it was determined that the refund must be rejected. The only provision in legislation that allows for the 30-month “clock” specified in s.83D(3)(a) to be paused is set out in s.83D(5)(a). The circumstances allowed for are:

- i. an appeal to An Bord Pleanála

ii. a Court Order ordering that construction cease

Neither of these were shown [...] as having occurred.

2.15 The refund was formally rejected on **22/07/2025**. [...]

2.16 After the issuing of the decision on 22/07/2025, there were multiple communications between [the Respondent] and the Appellant around the decision and the difficulties the Appellant had experienced [...]. While [the Respondent] sympathised with the circumstances, the decision to reject the refund had to be upheld per the requirements of the refund scheme as set out in legislation.

2.17 Following receipt of the Appellant's Notice of Appeal in September and further review of the case, it was realised that incorrect information about the reason for the refusal of the refund had been provided to the Appellant in the message of 22/07/2025, and in subsequent communications.

A letter correcting this error was issued to the Appellant on **11/09/2025** [...]. It apologised for the error and stated the correct section of legislation the refund had been rejected under. It also confirmed that the decision to refuse the refund stood.

To confirm:

- The original communications advised that the refund had been rejected under s.159A – 4-year limit to claim a refund [...]. This was an error. The claim was submitted well within the applicable 4-year time-limit for s.83D refunds.
- The refund was rejected because of a different time-related condition of the refund scheme, stipulated in s.83D(3)(a), SDCA – 30-month deadline for construction to commence, applicable from the Date of Execution of the instrument.

[...]"

Material Facts

34. Having considered the documentation and submissions in this appeal, the Commissioner makes the following findings of material fact:

34.1. On 24 June 2021, an instrument was executed in respect of the conveyance or transfer on sale of the Site to the Appellant.

- 34.2. On 19 July 2021, a SD return was filed on behalf of the Appellant in respect of the conveyance or transfer on sale of the Site to the Appellant.
- 34.3. The consideration stated on the SD return was €140,969.16.
- 34.4. The SD liability on the conveyance or transfer on sale of the Site, charged at the non-residential SD rate of 7.5%, was €10,572.
- 34.5. The SD liability of €10,572 was paid by the Appellant.
- 34.6. On 25 January 2024, construction of a residential dwelling commenced on the Site, pursuant to the Commencement Notice dated [REDACTED].
- 34.7. The Commencement Notice was submitted to the local building control authority on [REDACTED] and acknowledged as valid by that authority [REDACTED].
- 34.8. On 9 June 2025, the Appellant submitted a SD repayment claim and accompanying documentation online to the Respondent via the eRepayments system on ROS.
- 34.9. The Respondent refused the SD repayment claim on the basis that construction operations commenced on the Site outside the statutory time limit of thirty months after the execution of the instrument of conveyance or transfer on sale of the Site to the Appellant.
- 34.10. On 3 July 2025, the Appellant submitted additional documentation to the Respondent requesting the SD repayment claim be granted on the basis that the Appellant had faced significant personal, financial and health difficulties and the Covid-19 pandemic had led to a delay in construction commencement that was outside the Appellant's control.
- 34.11. On 22 July 2025, the Respondent confirmed its decision to refuse the SD repayment claim. At that time, the Respondent incorrectly advised the Appellant that the SD repayment claim was refused because it had been made outside the four-year time limit provided for in section 159A of the SDCA 1999.
- 34.12. Following commencement of the appeal, the Respondent confirmed to the Appellant, on 11 September 2025, that the SD repayment claim was refused on the basis that construction of the residential dwelling on the Site had not commenced within the thirty-month time limit set down in section 83D(3)(a) of the

SDCA 1999, and that the four-year time limit set down in section 159A of the SDCA 1999 was not relevant in this case.

Analysis

Burden of proof in tax appeals

35. The appropriate starting point for this analysis is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that the assessment to tax or the decision of the Respondent is incorrect.
36. This proposition is now well established by case law. For example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 (“*Menolly Homes*”), at paragraph 22, Charleton J. stated:

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

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

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

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

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

Section 83D of the SDCA 1999

39. The Appellant is appealing the decision of the Respondent whereby it refused the Appellant’s claim for a repayment of SD under section 83D(3)(a) of the SDCA 1999. Section 83D(3)(a) provides, in certain circumstances, for a repayment of SD paid on an instrument in relation to the conveyance or transfer on sale of land if construction of a residential dwelling commences on the land pursuant to a commencement notice within the period of thirty months following the date of execution of the instrument. In this case, the date of execution of the instrument was 24 June 2021. Therefore, to be entitled to a repayment of SD within the provisions of section 83D(3)(a) of the SDCA 1999,

construction of the residential dwelling in this case was required to commence on the Site within thirty months of 24 June 2021. Therefore, the deadline for construction to commence on the Site was 24 December 2023 in this case. The Commissioner has found as a material fact that construction commenced on the Site on 25 January 2024, pursuant to the Commencement Notice. Therefore, the Commissioner is satisfied that construction commenced on the Site after the thirty-month statutory time limit had elapsed.

40. The Commissioner notes that, when applying for the SD repayment, the Appellant stated “Yes” in response to the question at section 6(b) of the application form titled “*Declaration as required under Section 83D [of the SDCA 1999]*”. Therefore, the Appellant confirmed on the application for the SD repayment that construction commenced within thirty months following the date of execution of the instrument. The Respondent has submitted that this was an error by the Appellant as the other documentation submitted by the Appellant with the SD repayment claim confirms that construction commenced on 25 January 2024, outside the thirty-month time limit. The Commissioner is satisfied that, based on the submissions and documentation before her, from both parties, construction did not commence prior to 25 January 2024. This is borne out by the document issued by the local building control authority, submitted as part of this appeal, acknowledging the Commencement Notice as valid and setting down that the earliest date on which construction could commence pursuant to that notice as 25 January 2024. Furthermore, the Commissioner notes that the Appellant did not submit to the Commission in either the grounds of appeal in ■■■ Notice of Appeal or in ■■■ SoC that construction commenced prior to 25 January 2024. Therefore, the Commissioner finds that construction did not commence on the Site on or before 24 December 2023 and therefore that construction did not commence within the thirty-month time limit under section 83D(3)(a) of the SDCA 1999.
41. Section 83D(5) of the SDCA 1999 provides for two exceptions to the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999. The first exception is where there is a planning delay due to an appeal under section 7 of the Building Control Act 1990. The second exception is where the delay is due to a court order requiring construction operations to cease. The Commissioner is satisfied that there was no appeal against planning permission or court order to cease construction in this case. Therefore, the Commissioner finds that the delay in commencement of construction of the residential dwelling on the Site does not fall into either of the two exceptions listed in section 83D(5) of the SDCA 1999. The Commissioner notes that section 83D of the SDCA 1999 does not provide for any other exceptions to the thirty-month time limit.

42. The Commissioner notes the Appellant's submissions that the delay in commencing construction in this case was due to a number of factors including the Appellant's personal, financial and health difficulties and construction delays outside the Appellant's control arising from the Covid-19 pandemic. The Commissioner is satisfied that section 83D of the SDCA 1999 does not contain any provision whereby such factors can be taken into account in determining whether a SD repayment can be made. Therefore, the Commissioner finds that such factors are not relevant and cannot be used to extend the statutory thirty-month time limit under section 83D(3)(a) of the SDCA 1999.
43. Section 83D of the SDCA 1999 does not provide for extenuating circumstances in which the thirty-month requirement may be mitigated such as the claimant's personal, financial and health difficulties or the delays in the construction sector arising from the Covid-19 pandemic. The Commissioner has no authority or discretion to direct that a repayment be made to the Appellant where the claim for a repayment does not comply with the statutory time limit set down in section 83D(3)(a) of the SDCA 1999. Construction of the residential dwelling began on 25 January 2024. The date of execution of the instrument is 24 June 2021. The thirty-month time limit expired on 24 December 2023. Therefore, the construction did not commence within the thirty-month time limit set down in the legislation.
44. While the Commissioner notes that construction commenced within a very short period of the expiry of the thirty-month time limit, there is nonetheless no provision in the legislation that allows a SD repayment to be made in such circumstances.
45. The Commissioner notes the Appellant encountered a number of difficulties completing the SD repayment claim online via the eRepayments system. The Commissioner is satisfied that sections 83D(8)(b) and 83D(8)(d) of the SDCA 1999 require that a repayment claim "*shall*" be made in the form and manner specified by the Respondent and solely by electronic means through the online system provided by the Respondent. The Relevant Manual confirms that the SD repayment claim must be made online and provides guidance on the completion of the claim including screenshots of the steps required. The Commissioner is satisfied that the use of the word "*shall*" in the legislation means there is an absence of discretion in regard to the format and method of making the repayment claim. The difficulties encountered by the Appellant when filing the SD repayment claim undoubtedly led to delay in making the repayment claim. However, the Commissioner is satisfied that this delay did not contribute to the Respondent's decision to refuse the SD repayment claim. The Commissioner notes that the SD repayment claim was refused on the basis that construction of the residential dwelling commenced outside

the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999. In this case it is the date on which construction commenced that is of relevance, not the date of filing of the repayment claim. The timing of the filing of the repayment claim, the difficulty and delay encountered by the Appellant in the filing process and the requirement to file online are not relevant in this case. As stated above, the statutory time limit applicable in this case expired on 24 December 2023. Therefore, the Commissioner finds that the delays and difficulties completing the filing are not relevant in the determination of this appeal.

Section 159A of the SDCA 1999 / error by the Respondent

46. The Respondent has submitted that it gave incorrect information to the Appellant in its email of 22 July 2025 wherein the Respondent stated that the SD repayment claim had been refused because it was made outside the general four-year time limit imposed for SD repayment claims under section 159A of the SDCA 1999. The Respondent repeated this error on a number of occasions in its correspondence with the Appellant between 22 July 2025 and 10 August 2025. After this appeal had commenced and been notified to the Respondent, the Respondent issued an apology and clarified the correct position in its correspondence to the Appellant on 11 September 2025. In that correspondence the Respondent stated that the SD repayment claim was refused on the basis that the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999 was not satisfied.
47. The Commissioner has found above that the relevant time limit in this case is the thirty-month one laid down in section 83D(3)(a) of the SDCA 1999. Furthermore, the Commissioner has found that construction on the Site did not commence within that thirty-month time limit. There is no doubt that the Respondent's error was unfortunate and misled the Appellant. However, the Commissioner is satisfied that the correct decision, being the refusal of the SD repayment claim, was made by the Respondent. The Commissioner is satisfied that the decision of the Respondent to refuse the SD repayment claim was correct because the thirty-month time limit under section 83D(3)(a) of the SDCA 1999 was not satisfied in this case.
48. Therefore, the Commissioner finds that the Respondent's error in this case did not have a material effect on the outcome of the Appellant's application for the SD repayment and does not impact on the Commissioner's conclusions in this appeal.

Jurisdiction of an Appeal Commissioner

49. Finally, the Commissioner notes the Appellant's request that the Commissioner show leniency in the circumstances where the Appellant is counting on obtaining the SD repayment to fund the final instalment payment on the residential dwelling constructed on the Site and in light of the Appellant's personal, financial and health difficulties.

Additionally, the Appellant stated the construction delays were outside ■ control as these arose due to the Covid-19 pandemic. The Commissioner notes that during the pandemic, there were significant public health measures implemented over a period of time, with those measures including temporary closure of construction sites.

50. It is appropriate at this point for the Commissioner to summarise her jurisdiction in tax appeals. In *Lee v Revenue Commissioners* [2021] IECA 18 (“*Lee*”), the Court of Appeal made clear that the function of an Appeal Commissioner is to determine by reference to applicable legislation the correct amount of tax owed. At paragraph 20, Murray J. stated:

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

51. In *Lee*, Murray J. continued at paragraph 76:

“[...] 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.”

52. The Commissioner empathises with the Appellant’s difficulties in this case. However, the Commissioner is satisfied that she does not have any jurisdiction to set aside a decision of the Respondent that is made in accordance with SD legislation, on the basis of the Appellant’s personal, financial or health difficulties or due to the consequences of the Covid-19 pandemic that were outside the Appellant’s control. Such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. These matters come within the jurisdiction and remit of the Courts.

Conclusion

53. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that an assessment to tax or a decision of the Respondent is incorrect. For the reasons set out in the analysis above, the Commissioner is satisfied that the Appellant has not discharged the burden of proof to satisfy the Commissioner that the Respondent was incorrect in its decision to refuse the Appellant’s SD repayment claim under section 83D(3)(a) of the SDCA 1999.

54. The Commissioner finds that the decision of the Respondent to refuse to repay the SD in this case was correct on the basis that construction on the Site did not commence within the thirty-month time limit laid down in section 83D(3)(a) of the SDCA 1999.
55. The Respondent made an error in its dealings with the Appellant, referring to the incorrect section of the SD legislation and statutory time limit in its correspondence with the Appellant during the period from 22 July 2025 to 10 August 2025. The Respondent corrected its error on 11 September 2025 and issued an apology to the Appellant. While the Commissioner notes the error and its subsequent correction, she is satisfied that the decision to refuse the SD repayment claim was correct in law, on the basis that the thirty-month time limit set down in section 83D(3)(a) of the SDCA 1999 was not satisfied in this case.
56. While empathising with the Appellant's personal, financial and health difficulties and the construction delays that arose from the extenuating circumstances of the Covid-19 pandemic and the related public health measures, the Commissioner finds that the legislation does not provide for any exception to the application of the thirty-month time limit, laid down in section 83D(3)(a) of the SDCA 1999, for those difficulties or delays.
57. The Commissioner does not have jurisdiction to use discretion in the application of the legislation or show the leniency requested by the Appellant.

Determination

58. As such and for all the reasons set out above, the Commissioner determines that the decision of the Respondent of 22 July 2025 to refuse the Appellant's claim for a SD repayment pursuant to section 83D of the SDCA 1999, in the amount of €7,699.33, shall stand.
59. The Commissioner appreciates that this determination will be disappointing for the Appellant. The Appellant was entitled to check if the Respondent's refusal of the SD repayment claim was correct and [REDACTED] prudent to do so in all the circumstances. However, as noted above, the legislation does not afford the Commissioner any discretion in this matter.
60. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL and section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

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

Appeal

62. 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.



Suzanne Carter
Appeal Commissioner
6 February 2026