



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

135TADC2024

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal pursuant to section 159A(5) of the Stamp Duties Consolidation Act 1999 (“SDCA 1999”) to the Tax Appeals Commission (“the Commission”) against the refusal by the Revenue Commissioners (“the Respondent”) to allow a claim made by ██████████ (“the Appellant”) for a repayment of stamp duty in the amount of €1,875. The request was refused on the ground that it was made out of time.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), this appeal is determined without a hearing.

Background

3. On 5 November 2019, lands comprised in ██████████ (“the lands”) were transferred to the Appellant. The Appellant paid consideration of €25,000 for the transfer.
4. On 18 November 2019, the Appellant paid stamp duty of €1,875 in respect of the transfer, being 7.5% of the consideration paid. The instrument was stamped on that date by the Respondent.

5. In January 2024, the Appellant sought a repayment of the stamp duty paid, as the transfer was withdrawn on [REDACTED]. The Respondent refused the request for a repayment, on the ground that it was made outside the four-year time limit prescribed by section 159A of the SDCA 1999.
6. On 27 March 2024, the Appellant appealed against the Respondent's refusal to the Commission. On 6 June 2024, the Commission notified the parties that the Commissioner intended to determine the appeal without a hearing, pursuant to section 949U of the TCA 1997. Neither party objected to the appeal being determined without a hearing, and the Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

7. Section 2(3) of the SDCA 1999 states that

"Any instrument chargeable with stamp duty shall, unless it is written on duty stamped material, be duly stamped with the proper stamp duty before the expiration of 30 days after it is first executed."

8. Section 159A(2) of the SCDA 1999, as of 18 December 2023, states *inter alia* that

"The Commissioners shall not make a repayment to a person unless...

(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..."

Submissions

Appellant

9. The Appellant stated that

"On the belief that Planning Permission would be granted on the site, I instructed my solicitor to Stamp the deed. The Stamp Duty return was filed on the 18th November 2019 ([REDACTED]) and was also lodged with the Land Registry. However the Planning was subsequently refused by [REDACTED] on the [REDACTED] [REDACTED] and I decided [to] withdraw the application."

Due to the Covid pandemic and the fact that [REDACTED], it took some time for the issues to be rectified and a new site was marked out [by] my engineer. The new deed of transfer was not signed until 21st December 2023 and this was subsequently stamped in January 2024 [REDACTED].”

Respondent

10. The Respondent stated that

“This appeal relates to the denial of Revenue to grant a stamp duty refund on a cancelled return as the claim was made outside of the 4 year limit as provided for in Section 159A SDCA 1999.

The facts that we understand are not in dispute are as follows...

A stamp duty return was filed on 18/11/2019 under stamp duty [REDACTED] on behalf of [the Appellant]...

The date of execution on this return is 05/11/2019...The consideration input on this return is €25,000.00...

Stamp duty was charged on this non-residential land at 7.5% which amounted to €1875.00. Payment of €1875.00 was received by Revenue on 18/11/2019. A stamp duty certificate issued dated 18/11/2019.

On 09/01/2024 correspondence was received through My Enquiries from [the Appellant’s solicitors] who had filed the original return. In this correspondence [the Appellant’s solicitors] requested that the return filed under document ID [REDACTED] be cancelled and the stamp duty that was paid amounting to €1875.00 be refunded as she states that the land transferred on this return was incorrect and the application did not proceed with the Land Registry...

On 29/02/2024 the filer responded through My Enquiries confirming that a new return had been filed under stamp duty document ID [REDACTED] The return filed under document ID [REDACTED] was filed on 08/01/2024. The date of execution on document ID [REDACTED] is 21/12/2023... The consideration input on this return filed under document ID [REDACTED] was €90,000.00. Stamp duty was charged on this residential transfer on document ID [REDACTED] at 1% which amounted to €900.00. Payment of €900.00 was received by Revenue on 09/01/2024 in relation to document ID [REDACTED] A stamp duty certificate issued 09/01/2024 in relation to document ID [REDACTED]

On 04/03/2024 I cancelled the return filed under document ID [REDACTED] This generated a refund of €1875.00 which was disapproved as the request to cancel this return was outside of the 4 year limit.”

Material Facts

11. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 11.1. The lands were transferred to the Appellant on 5 November 2019. The instrument was executed on that date.
 - 11.2. On 18 November 2019, the Appellant paid stamp duty of €1,875 in respect of the transfer. The instrument was stamped on that date by the Respondent.
 - 11.3. In [REDACTED], the transfer of the land was cancelled.
 - 11.4. On 9 January 2024, the Appellant claimed repayment of the stamp duty paid by her on 18 November 2019. The claim was refused by the Respondent on the ground that it was made outside of the statutory timeframe.

Analysis

12. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her claim for a repayment of stamp duty. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 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.*”
13. The facts that are material to the determination of this appeal are not in dispute. On 5 November 2019, the lands were transferred to the Appellant, and the instrument of transfer was executed on that date. On 18 November 2019, the Appellant paid stamp duty of €1,875, and the instrument was stamped by the Respondent on that date. In [REDACTED] the transfer of the lands was cancelled, and on 9 January 2024, the Appellant requested repayment of the stamp duty.
14. The repayment request was refused by the Respondent on the basis that it did not comply with the timeframe prescribed by section 159A of the SDCA 1999. As of 18 December 2023, section 159A prohibits the repayment of stamp duty where the claim for repayment has not been made within four years from, *inter alia*, “*the latest date the instrument was*

required to be stamped under section 2. Section 2 of the SDCA 1999 requires the instrument to be stamped “*before the expiration of 30 days after it is first executed.*”

15. In this instance, the instrument was executed on 5 November 2019. Therefore, pursuant to section 2, it was required to be stamped by 5 December 2019. Consequently, pursuant to section 159A, the claim for repayment had to be within four years of that date, i.e. by no later than 4 December 2023. However, the claim was made just over a month later, i.e. on 9 January 2024. Therefore, the claim was not made within the prescribed timeframe, and the Respondent was correct to refuse it.
16. In passing, the Commissioner notes that the timeframe in section 159A prior to 18 December 2023 was slightly different, in that it required the claim to be made within four years of when, *inter alia*, “*the date the instrument was stamped by the Commissioners*”. In this instance, that would have been four years from 18 November 2019.
17. The Commissioner has sympathy for the Appellant, and he appreciates that this determination will be disappointing for her. However, the timeframe set out in section 159A is mandatory, and neither the Respondent, nor the Commissioner on appeal, have discretion to amend it or set it aside. Therefore, for the reason set out herein, the appeal is unsuccessful.

Determination

18. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent’s decision to refuse the Appellant’s claim for a repayment of stamp duty was correct, and the decision stands.
19. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 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

20. 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

21. 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.



Simon Noone
Appeal Commissioner
1 August 2024