



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

34TACD2025

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal by ██████████ (“the Appellant”) to the Tax Appeals Commission (“the Commission”) against the refusal by the Revenue Commissioners (“the Respondent”) of her claim, under the Help To Buy (“HTB”) scheme, that she be allowed to rely on income tax returns for years other than the four years immediately preceding her application, when calculating the amount of relief to be granted to her.
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 20 June 2024, the Appellant made an application with her partner for relief under the HTB scheme. On 26 June 2024, her claim was approved by the Respondent in the amount of €15,422.08.
4. The Appellant was aggrieved that her application was processed on the basis of the income tax paid by her for the four preceding years i.e. 2020 to 2023. She contended that she should be entitled to choose the “best” four years from a larger time span.

5. On 25 July 2024, she appealed against the Respondent's decision to the Commission. On 15 August 2024, the Respondent objected to the Commission accepting the appeal, on the basis that the grounds of appeal were outside the Commission's jurisdiction. However, the Commissioner did not refuse to accept the appeal, as he was not satisfied that it was invalid. He noted that section 477C(21) of the TCA 1997 allows for the making of an appeal against a decision of the Respondent "*to refuse a claim under this section.*" It seemed to him that the Appellant was appealing against the Respondent's refusal of her particular claim, albeit it did grant her relief under the HTB scheme. Having refused the Respondent's application to refuse the appeal, the parties were directed to submit Statements of Case.
6. On 6 November 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation

7. Section 477C(1) of the TCA 1997 defines "relevant tax year" as

"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."

8. Section 477C(5)(a) of the TCA 1997 states that

"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."*

9. Section 477C(5A) amends subparagraphs (i) and (iii) of section 477(5)(a), but does not amend subparagraph (ii).

Submissions

Appellant

10. In her notice of appeal, the Appellant stated that

“My partner and I applied for the HTB scheme with [the Respondent] and an amount of €15,422.08 was approved on 26/06/2024. Unfortunately we were informed that only the last four years can be used in the assessment.

I contacted a local TD on 04/07/2024 to request he contact the [Respondent] on our behalf to request a review of this decision. I included the information below in my email issued to the TD's office. On 19/07/2024 an Administrative Assistant for the TD contacted me by phone to state that [the Respondent] cannot choose any other years for the calculation.

We were very disappointed with this response as in September 2021 we both decided to take a break from our jobs after the COVID pandemic. I did not work from [REDACTED] [REDACTED] and my partner did not work from [REDACTED] [REDACTED]

[...]

My partner and I are at a substantial disadvantage being restricted to the previous 4 years for this application. I believe the scheme should allow an applicant to choose the best 4 years out of the last 5/6 years. I paid €5340.63 PAYE in 2018 and over €5000 PAYE in 2019. My partner paid €1176.17 in 2018 and €1584.83 in 2019. Unfortunately, to our detriment, these years are not being used whereas 2022 has been used in [the Respondent's] assessment where no PAYE was paid.

[...]

I am emailing to appeal this decision in using 2020 - 2023 for the calculation and request that either 2018 or 2019 are used instead of 2022 for both my partner and me. With the current housing crisis this scheme should be revised to allow applicants to choose their best 4 years. For our application, if 2019 or 2018 were used instead of 2022 for both my partner and me, that would mean an additional €6500 approximately towards our mortgage deposit which would be of great benefit to us.”

Respondent

11. In its Statement of Case, the Respondent stated that

“While the Respondent is appreciative of the situation of the Appellant, the legislation governing the HTB scheme is clear... As the Appellant submitted her HTB application in 2024, there is no ambiguity that the only periods for which a refund of income tax are permissible under the auspices of the HTB scheme for this application, are 2020-2023.

The Respondent further notes that the Appellant has not disputed this statutory basis in her appeal submission, but instead requested that their application for relief be considered for years outside of the statutory criteria.

The Appellant has not established how the [TCA 1997] allows them to utilise tax year 2018 or 2019 for their HTB application and the Respondent respectfully submits that [her] appeal must fail.”

Material Facts

12. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:

12.1. The Appellant and her partner applied for relief under the HTB scheme on 20 June 2024. On 26 June 2024, the Respondent notified her that she had been granted relief in the amount of €15,422.08.

12.2. The relief was granted to the Appellant and her partner on the basis of their income tax returns for 2020 to 2023 inclusive.

Analysis

13. 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.”*

14. In addition to the above, in the recent judgment in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, 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 *inter alia* 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.....”

15. This appeal concerns the correct interpretation of the legislation governing the HTB scheme. This scheme was introduced by section 9 of the Finance Act 2016, which inserted section 477C into the TCA 1997. The scheme provides for the making of a payment to assist first time buyers to obtain a deposit to purchase or build their first home. The HTB payment is provided at deposit stage and takes the form of a repayment of income tax. The HTB scheme has been extended on a number of occasions since its introduction. Most recently, the Finance Act 2024 extended the scheme to 31 December 2029.
16. In this appeal, the Appellant has contended that she should be able to rely on her income tax return for 2018 or 2019 rather than 2022, as this would result in a greater amount of relief being granted. However, the difficulty she faces is that the legislation clearly requires the Respondent to rely on *“the 4 tax years immediately preceding the year in which an application is made”* when calculating the amount of relief to be granted.
17. This is confirmed by section 477C(5)(a) which provides that the amount granted will be the lesser of (i) €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”*, or (iii) 5% of the purchase price. Section 477C(5A) subsequently amended (i) to €30,000 and (iii) to 10% of the purchase price, but did not amend (ii).
18. The Appellant applied for HTB in 2024, and therefore the Commissioner is satisfied that the Respondent correctly assessed her eligibility, and the amount of relief to be granted, on the basis of her and her partner’s income tax returns for 2020 to 2023. Indeed, the Appellant has not contended that the Respondent incorrectly calculated the relief, but rather has argued that the terms of the HTB scheme should be amended to allow a

taxpayer such as herself nominate their four 'best' years, rather than having to rely on the four years preceding the application.

19. The Commissioner is satisfied that there is no basis on which he could direct the Respondent to amend the scheme in the manner sought by the Appellant. The HTB scheme was introduced by the Oireachtas, and its terms can only be amended by the Oireachtas. The Commission has no jurisdiction to direct the Oireachtas to amend legislation. In *Lee v Revenue Commissioners* [2021] IECA 18, the Court of Appeal (Murray J) confirmed the jurisdiction of the Commission as follows:

“76. The jurisdiction of the Appeal Commissioners... 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.”

20. While the above quotation concerns assessments rather than decisions of the Respondent on the granting of relief under a statutory scheme, the Commissioner is satisfied that the Commission's jurisdiction is similarly limited in this matter. In this instance, he is satisfied that the Respondent correctly assessed and calculated the Appellant's entitlement to relief under the HTB scheme, and consequently the appeal is unsuccessful.

Determination

21. 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 grant the Appellant relief in the amount of €15,422.08 was correct, and the decision stands.
22. 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

23. 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

24. 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
08 January 2025