BETWEEN/

31TACD2018

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against the refusal of relief in accordance with s.477C of the Taxes Consolidation Act 1997, as amended (hereafter 'TCA 1997') known as the Help To Buy ('HTB') incentive scheme.

2. By notice in writing dated 22 May 2017, the Respondent refused to grant relief to the Appellant on the basis that the Appellant was not a '*first-time purchaser*' within the meaning of s.477C(1) TCA 1997. The Appellant duly appealed.

Background

3. In April 2016, the Appellant purchased land in **[location redacted]** in order to construct a family home for herself, her husband and her new born son. The Appellant stated that the land was purchased principally for its location (adjacent to her parents), and that a pre-existing farmhouse which was situate on the land was derelict and uninhabitable and would be demolished in accordance with clause 2(i) of planning permission obtained in October 2016, in respect of the new build.

4. On 1 May 2017, the Appellant claimed HTB relief in respect of the new build. The Appellant submitted that she relied on the provisions of s.477C TCA 1997 and also on the Revenue Tax and Duty Manual, Part 15.04.46 which provides at paragraph 5.4;

> *'5.4 Purchase of site containing a derelict house*
>
> *First-time buyers may purchase a site containing a house which is derelict and which they plan to demolish, in whole or in part, with the intention of building a new house. First time buyers intending to undertake such purchases should contact Revenue who will consider them on a case by case basis.'*

5. The pre-existing farmhouse had not been inhabited since January 2013. The Appellant stated that the building was derelict, that there were significant structural deficiencies, that the walls were cracked and collapsing and that the interior was damp and mouldy. The Appellant furnished an architect's report in relation to the condition of the building.

6. The Respondent refused to grant relief under the HTB scheme on the basis that the pre-existing farmhouse situated on the land, meant that the Appellant had, at the time of making a claim in accordance with s.477C(3), previously purchased '*a dwelling'* and that as a result, the Appellant was not a '*first-time purchaser*' within the meaning of s.477C(1) TCA 1997. By notice in writing dated 22 May 2017, the Respondent refused to grant HTB relief. The Appellant duly appealed.

Legislation

7. As set out in **Appendix I** below, the relevant legislative provision is section 477C TCA 1997, in particular the definition of '*first-time purchaser*' in section 477C(1) which provides; *'first-time purchaser' means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;'*

Submissions

8. The Appellant claimed that she was a '*first-time purchaser*' for the purposes of the HTB scheme because the pre-existing farmhouse on the land was derelict and uninhabitable and was not suitable for use as a dwelling. Thus, the Appellant contended that the farmhouse was not '*a dwelling'* for the purposes of the definition of '*first-time purchaser'* contained in section 477C(1) TCA 1997.

9. The Respondent submitted that the pre-existing farmhouse constituted '*a dwelling'* on the basis that it was suitable for use as such and had been used as a dwelling in the past. The Respondent contended that, as a result, the Appellant had, at the time of making a claim in accordance with s.477C(3), previously purchased '*a dwelling'* for the purposes of the HTB incentive scheme. Thus the Respondent submitted that the Appellant was not a '*first-time purchaser'* within the meaning of s.477C TCA 1997 and was not entitled to relief pursuant to the scheme.

Evidence

10. The Appellant, who represented herself at hearing, furnished various documents in support of her appeal including; notification of final grant of planning permission dated October 2016, medical reports relating to her baby son (hereafter referred to as baby 'James') and an architect's report from O'Halloran & Rooney Architects Ltd., which provided;

> *'From a visual inspection it appeared that the external walls of the dwelling were collapsing, it was apparent that the previous owner of the dwelling had erected buttressing around the side and rear external walls to reinforce them, however, it would not be possible to extend or refurbish the dwelling to suit the requirements of the family as the structural integrity of the dwelling was clearly compromised.*
>
> *From a visual inspection of the dwelling large cracks were evident in the external walls of the dwelling, one cause of the large cracks could be a lack of proper foundations supporting the dwelling.*
>
> *There was evidence of dampness throughout the dwelling, the materials in the external walls appeared to contain moisture.*

There was evidence of mould in the dwelling which appeared from a visual inspection to be caused as a result of structural deficiencies in the dwelling.

Following consultations with the planning authority and with [the Appellant and her husband], it became clear that the only viable option for them to develop a family home at their property involved the demolition of the existing dilapidated dwelling and the construction of a new dwelling which included the development of a therapy room for their son **[James].** *Planning permission was sought and obtained for the demolition of the existing dwelling and the erection of a new dwelling pursuant to planning register number 16/6207. Clause 2(i) of the Grant of Planning Permission requires 'Prior to occupation of the new dwelling the existing two storey structure shall be demolished'.*

11. The Appellant submitted that the pre-existing farmhouse was not suitable for use as a dwelling as it was in derelict condition and was unfit for human habitation. The Respondent relied on photographs of the farmhouse, taken at a distance of approximately 150 metres and 250 metres respectively, in support of the Respondent's view that the farmhouse was suitable for use as a dwelling. The Respondent did not carry out an inspection of the farmhouse nor did the Respondent furnish an architect's report or engineer's report in relation to the condition of the building or its suitability as a dwelling. The Respondent submitted that the building had a sound roof, windows and doors and that there were sanitary facilities in it even if these were not connected to the mains. The Respondent seemed to suggest that it would have been possible to achieve a dwelling suitable for habitation, if a restoration or renovation of the building had taken place. However, as is evident from the planning permission obtained, that was not the Appellant's intention and is not what in fact occurred.

12. At hearing, the Respondent's officials accepted that they had not seen the interior of the building and did not know what condition it was in. The Respondent's officials did not request an adjournment either to carry out an inspection of the building or to obtain an architect's report or engineer's report in relation to it. The Respondent relied exclusively on the photographs in support of its submission that the pre-existing farmhouse was suitable for use as a dwelling.

Analysis

13. The relevant legislative provision is section 477C TCA 1997, in particular the definition of '*first-time purchaser'* in section 477C(1) which provides;

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

14. While the parties to the appeal had opposing views on whether the pre-existing farmhouse constituted a '*dwelling'* for the purposes of the definition of first-time purchaser in s.477C(1), they were *ad idem* in relation to the legal meaning to be attributed to the word '*dwelling'* contained in the definition. Both parties agreed that a '*dwelling'* referred to a building which was suitable for use as a dwelling.

15. Based on the long history of jurisprudence in relation to the taxation statutes including *inter alia*, *Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449, I am satisfied that the correct interpretation in relation to the word '*dwelling'* for the purposes of the definition of '*first-time purchaser'* in s.477C(1) is that advanced by the parties, namely; a building which is suitable for use as a dwelling.

16. In arriving at this conclusion, I have applied the tests set out by Henchy J. in *Inspector of Taxes v Kiernan* [1982] ILRM 13, a case which turned on the meaning of the word '*cattle'* for the purposes of the Income Tax Act 1967. The relevant excerpt from the judgment is contained on pages 121 and 122 as follows;

> *'There is no doubt that, at certain stages of English usage and in certain statutory contexts, the word "cattle" is wide enough in its express or implied significance to include pigs. That fact, however, does not lead us to a solution of the essential question before us. When the legislature used the word "cattle" in the Act of 1918 and again in the Act of 1967, without in either case giving it a definition, was it intended that the word should comprehend pigs? That the word has, or has been*

held to have, that breadth of meaning in other statutes is not to the point. A word or expression in a given statute must be given meaning and scope according to its immediate context, in line with the scheme and purpose of the particular statutory pattern as a whole, and to an extent that will truly effectuate the particular legislation or a particular definition therein. For example, s 1 of the Towns Improvement (Ireland) Act, 1854, defines the word "cattle" as including "horse, mare, gelding, foal, colt, filly, bull, cow, heifer, ox, calf, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine." Unlike such an instance, the question posed here is whether the word "cattle" includes pigs in a taxing Act when the word is left undefined.

Leaving aside any judicial decision on the point, I would approach the matter by the application of three basic rules of statutory interpretation. First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning. As Lord Esher MR put it in Unwin v Hanson[11] at p 119 of the report:–

> *"If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words."*

The statutory provisions we are concerned with here are plainly addressed to the public generally, rather than to a selected section thereof who might be expected to use words in a specialised sense. Accordingly, the word "cattle" should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily.

Secondly, if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be

construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language: see Lord Esher MR in Tuck & Sons v Priester[12] (at p 638); Lord Reid in Director of Public Prosecutions v Ottewell[13] (at p 649) and Lord Denning MR in Farrell v Alexander[14] (at pp 650-1). As used in the statutory provisions in question here, the word "cattle" calls for such a strict construction.

Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed. In regard to "cattle", which is an ordinary and widely used word, one's experience is that in its modern usage the word, as it would fall from the lips of the man in the street, would be intended to mean and would be taken to mean no more than bovine animals. To the ordinary person, cattle, sheep and pigs are distinct forms of livestock.'

17. In the within appeal the word '*dwelling'* is not defined. In such circumstances, the word must be given meaning according to its immediate statutory context, being section 477C TCA 1997. The statutory scheme in question is directed at the public at large and thus the word '*dwelling'* should be given its ordinary or colloquial meaning and should be construed in a strict manner. In this regard, I am satisfied that the word '*dwelling'* refers to a building which is suitable for use as a dwelling and that it should not be interpreted so generally that it would include a building which cannot be so used.

18. In addition, as the word '*dwelling'* has widespread and unambiguous currency, I am obliged to draw on my own experience of its use. In this regard, as stated above, I accept and agree with the meaning advanced by the parties, namely; that a dwelling is a building which is suitable for use as a dwelling. I agree with the parties that the word 'dwelling' in the definition of '*first-time purchaser'* in section 477C(1) would not include a derelict building.

Local Property Tax ('LPT')

19. In support of the Respondent's submission that the pre-existing farm house was a '*dwelling'* within the meaning of section 477C(1), the Respondent submitted that the owners of the farmhouse during the period 2013-2016, paid local property tax on the basis that the farmhouse constituted a dwelling. In addition, the Respondent submitted that the Appellant paid local property tax after she purchased the land in April 2016 on the same basis. As a result, the Respondent contended that the pre-existing farmhouse was a '*dwelling'* for the purposes of the definition of '*first-time purchaser'* in section 477C(1) TCA 1997.

20. In response the Appellant stated that she paid LPT after she purchased the property in April 2016 as she was conscious of ensuring that she was tax compliant. However, when Revenue officials in the Respondent's LPT division informed the Appellant that she was not required to pay LPT in circumstances where the property was uninhabitable, the Appellant applied for a refund of LPT and, at the date of hearing of this appeal, the Appellant awaited notification from the Respondent's LPT division in that regard.

21. As regards the Respondent's submission in relation to payment of LPT by previous owners, I find that it is not appropriate, in deciding whether to grant HTB relief to an applicant-taxpayer, to attribute to that taxpayer, the views formed on behalf of former owners of a property, as to their liabilities under the Finance (Local Property Tax) Act 2012. In short, I do not consider the circumstances pertaining to the payment of LPT to be relevant to the determination of the within appeal and I do not accept the Respondent's submission in this regard.

Consideration

22. The Respondent stated that the purchase price of €460,000 included consideration in relation to the pre-existing farmhouse of €160,000 and consideration in relation to the land, of €300,000. The Respondent submitted that if the pre-existing farmhouse had been in a true state of dereliction, it would not have commanded such substantial consideration.

23. Responding to this submission, the Appellant freely accepted that she paid in excess of the market value of the property. She stated that at the time she made the decision to try and acquire the land, she was in a maternity hospital with her new born son who had received a diagnosis of Down syndrome. She stated that she realised she would need additional family help and support as her new born son would have increased respiratory and medical needs.

24. Although the land was not on the market, the Appellant contacted her parents who lived nearby and asked them to make an approach to the owners to see whether they would be willing to sell. The owners agreed and the property was sold to the Appellant without being advertised on the open market. The Appellant stated that the land was worth more to her than its market value because it was adjacent to her parents' home and she knew that she would need extra family help and support. The Appellant wished to construct a new build on the land which included among other things, a therapy room for baby James, and the terms of the planning permission provided for demolition of the pre-existing farmhouse. She accepted that she paid above the odds, but stated that for her the site had potential.

25. In conclusion on this point, and returning to the question of whether the pre-existing farmhouse was a '*dwelling*' for the purposes of s.477C(1), I do not accept the Respondent's submission, namely, that the consideration attributable to the pre-existing farmhouse is a reliable measure of its state of dereliction.

Objective/Subjective

26. At hearing, the Respondent submitted that the pre-existing farmhouse was suitable for use as a dwelling and would be capable of suiting somebody's needs. The Respondent stated that it may not have been habitable for the Appellant and her young son but that it was habitable objectively and that as a result, it was a '*dwelling*' for the purposes of the definition of '*first-time purchaser*' in section 477C(1). The Appellant in response stated that she was claiming the relief on an objective and not a subjective basis. She stated that she was basing her appeal on a building which was uninhabitable and on the architect's report furnished.

Conclusion

27. It is important to note that the legal test to be applied in this appeal, applies at a point in time. The question is whether, at the time of a claim under s.477C(3), it can be said that the individual previously purchased *'a dwelling'* for the purposes of the definition of 'first-*time purchaser*' in s.477C(1) TCA 1997. I have determined, based on the submissions of the parties, that the meaning of the word '*dwelling'* is; a building which is suitable for use as a dwelling.

28. I accept the evidence of the Appellant, supported by the architect's report, that the pre-existing farmhouse was not suitable for use as a dwelling at the relevant point in time, due to collapsing walls, mouldy and damp interior and its general state of disuse and disrepair.

29. The Respondent did not carry out an inspection of the farmhouse nor did the Respondent furnish an architect's report or engineer's report in relation to the condition of the building or its suitability as a dwelling. At hearing, the Respondent's officials accepted that they had not seen the interior of the building and did not know what condition it was in. The Respondent's officials did not request an adjournment either to carry out an inspection of the building or to obtain an architect's report or engineer's report in relation to it. The Respondent relied exclusively on photographs taken at distances of 150 and 250 metres respectively, in support of their submission that the pre-existing farmhouse was suitable for use as a dwelling.

30. Based on the evidence adduced, the Appellant's architect's report was uncontested in terms of there being no other independent expert evidence. It is the best evidence there is of the condition of the building and its state of dereliction and it supports the Appellant's submission that objectively, the structure was not suitable for use as a dwelling.

31. As a result, I determine that on the date of claim in accordance with s.477C(3), the Appellant had not previously purchased '*a dwelling'* for the purposes of the definition of '*first-time purchaser*' in section 477C(1) and I determine that the Appellant is entitled to avail of relief under the help to buy scheme in accordance with section 477C TCA 1997.

32. This appeal is determined in accordance with section 949AL TCA 1997

COMMISSIONER LORNA GALLAGHER

November 2018

APPENDIX I

Section 477C TCA 1997 – Help to Buy

(1)In this section—

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

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

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

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

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

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

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

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

"purchase value" means—

(a)in the case of a qualifying residence, the price paid for the qualifying residence, being a price that is not less than its market value, or

(b)in the case of a self-build qualifying residence, the approved valuation;

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

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

"qualifying loan", means a loan, which—

(a)is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in—

(i)the purchase of a qualifying residence, or

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

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

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

"qualifying period" means the period commencing on 19 July 2016 and ending on 31 December 2019;

"qualifying residence" means—

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

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

and—

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

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

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

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

(II)in all other cases, €500,000;

"relevant tax year" means a year of assessment, within the 4 tax years immediately preceding the year in which an application is made under this section, in respect of which a claim for an appropriate payment, or part of such appropriate payment, is made by an individual;

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

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

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

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

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

(2)In this section, a "qualifying contractor" means a person who applies to the Revenue Commissioners for registration as a qualifying contractor (pursuant to arrangements for such

registration that are put in place by the Revenue Commissioners) and in respect of whom the Revenue Commissioners are satisfied is entitled to be so registered and—

(a)who—

(i)complies with the obligations referred to in section 530G or 530H, or

(ii)in the case of a contractor who is not a subcontractor to whom Chapter 2 of Part 18 applies, complies with the obligations referred to in subparagraph (i), other than the obligations referred to in paragraphs (a) and (b) of subsection (1) of section 530G or 530H,

(b)who has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section, and

(c)who provides to the Revenue Commissioners—

(i)details of qualifying residences which the contractor offers, or proposes to offer, for sale within the qualifying period,

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

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

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

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

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

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

that individual may make a claim for an appropriate payment.

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

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

(i)the amount of €20,000,

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

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

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

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

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

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

where—

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

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

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

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

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

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

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

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

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

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

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

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

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

meaning of Part 18D) which he or she is liable to pay, in respect of each such tax year,

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

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

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

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

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

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

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

(b)notwithstanding the obligation on an individual under paragraph (a)(i) to, as appropriate, make an application on or before 31 March 2017, where such an individual makes an application under subsection (6) in 2018 or 2019, the application shall be deemed to have been made in the tax year 2017, and the corresponding claim under subsection (3) shall be deemed to have been made in the tax year 2017.

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

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

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

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

(b)Notwithstanding paragraph (a) and subsection (25), where an application is made under this section in the period commencing on 1 October and ending on 31 December in any of the tax years 2017, 2018 or 2019 (hereafter in this paragraph referred to as the "first- mentioned period"), and the corresponding claim is made under subsection (3) in the period commencing on 1 January and ending on 31 March of the following year, the applicant shall be deemed to have made his or her claim in the first-mentioned period.

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

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

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

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

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

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

(10)Subject to the conditions specified in subsection (6)(b) being satisfied, the Revenue Commissioners shall notify the applicant of the maximum appropriate payment that would, following the making of a claim under this section, be available to or in respect of the applicant.

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

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

(i)his or her name and PPS number,

(ii)the address of the qualifying residence,

(iii)the purchase value of the qualifying residence,

(iv)details of the qualifying lender,

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

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

(vii)the amount of the qualifying loan,

(viii)evidence of the qualifying loan entered into,

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

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

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

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

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

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

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

(a)the contractor's name,

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

(c)the name of the claimant,

(d)the address of the qualifying residence,

(e)the purchase value of the qualifying residence,

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

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

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

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

(a)his or her name and PPS number,

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

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

(d)details of the qualifying lender,

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

(f)the amount of the qualifying loan,

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

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

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

(a)the name of the claimant,

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

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

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

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

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

(i)where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into

between the claimant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's bank account,

(ii)where in the period commencing on 1 January 2017 and ending on 31 December 2019, a contract referred to in subsection (3)(a) is entered into between the claimant and a qualifying contractor, to the qualifying contractor's bank account, or

(iii)where in the period commencing on 1 January 2017 and ending on 31 December 2019, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's qualifying loan bank account.

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

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

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

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

(I)by the claimant, or

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

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

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

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

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

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

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

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

(18)(a)Where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) No application or claim may be made under this section after 31 December 2019.][1]