



55TACD2019

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against the refusal of relief in accordance with s.244 of the Taxes Consolidation Act 1997, as amended (hereafter "TCA 1997") known as mortgage interest relief. By agreement of the parties, this appeal is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

2. S.244 TCA 1997 provides for relief for interest paid on certain home loans, commonly known as mortgage interest relief. The relief was ceased in 2012 but was extended by the Finance Act 2013 to certain new loans taken out on or after 1 January 2012 and on or before 31 December 2013.
3. The Appellants were approved a mortgage with Irish Bank in 2012 to construct a home on a site which had been gifted to the Appellant. Part of the loan was drawn down in 2012 and the remainder drawn down in 2013. The within appeal is

concerned with interest relief in 2013 on both portions of the loan drawn down in 2012 and 2013.

4. The Appellant was notified by letter dated 24 September 2014 that interest relief had been refused for the year 2013.
5. It is the Appellant's assertion that the loan meets the requirements of the legislation and thus the Appellants maintain they are entitled to claim interest relief on same.
6. It is the Respondents position that the interest on the portion of the loan drawn down in 2012 does not qualify for relief in 2013 because relief was concessionally given in 2012 and this concession has been withdrawn in 2013. It is the Respondents position that the interest on the portion of the loan drawn down in 2013 does not qualify for relief in 2013 as the loan does not meet the criteria as set out in the legislation and on that basis have refused to process the claim for relief in 2013.

Legislation

7. The relevant legislative provision is s.244 TCA 1997, in particular s.244(1)(a), s.244(7) and s.244(8) which provide:

(1)(a) "qualifying loan", in relation to an individual, means a loan or loans which, without having been used for any other purpose, is or are used by the individual solely for the purposes of defraying money employed in the purchase, repair, development or improvement of a qualifying residence or in paying off another loan or loans used for such purpose;

"qualifying residence", in relation to an individual, means a residential premises situated in an EEA state which is used as the sole or main residence of –(i) the individual.....

[(7) This subsection shall apply to a loan taken out and used by an individual—

(a) on or after 1 January 2012 and on or before 31 December 2012 solely for the purpose of defraying money employed in the purchase of an estate or interest in the land referred to in paragraph (b) and in respect of which the permission in subsection (10) applies but only where a residential premises, which is a qualifying residence in relation to that individual, is constructed on that land, or



(b) on or after 1 January 2012 and on or before 31 December 2013 solely for the purpose of defraying money employed in the construction of a residential premises which is a qualifying residence in relation to that individual on land—

(i) in respect of which he or she has, on or after 1 January 2012 and on or before 31 December 2012, acquired an estate or interest, and

(ii) the acquisition of which was financed by way of the loan referred to in paragraph (a).

(8) This subsection shall apply to a loan in respect of which there was in place, on or after 1 January 2012 and on or before 31 December 2012, an agreement evidenced in writing to provide that loan to an individual and—

(a) part of that loan is used in the period 1 January 2012 to 31 December 2012, and

(b) the balance of that loan is used in the period 1 January 2013 to 31 December 2013, by that individual solely for the purpose of defraying money employed in the repair, development or improvement of a residential premises which is a qualifying residence in relation to that individual.

Submissions

8. The Appellant contends that the interest on the loan drawn down qualifies for the relief under both s.244(7) and s.244(8) TCA 1997 in 2013.
9. S.244(7)
In support of their claim that the loan qualifies for the relief under s.244(7), the Appellant asserts that part of the loan was used to pay stamp duty and solicitor's fees pertaining to the transfer of the site. The Appellant also submits that part of the loan was used to pay for construction work on the site in 2012. The Appellant contends that these costs constitute the purchase of an interest in the site and were defrayed using the loan procured from the Irish Bank. The Appellant contends, therefore, that they meet the requirements under both s.244(7)(a) and s.244(7)(b) and should therefore qualify for relief.
10. The Respondent submits that paragraph (a) of s.244(7) does not apply as the Appellant was gifted the site for their home under construction on that site.



Therefore, the loan was not “employed in the purchase of an estate or interest in land”.

11. The Respondent further submits that the relief cannot be granted under paragraph (b) of s.244(7) for the same reason, as the land on which the residential premises was constructed was not acquired utilising the loan, the subject matter of the appeal. Because the land/ site was gifted to the Appellant no loan was used in its acquisition.
12. In support of their claim that the loan qualifies for the relief under s.244(8) the Appellant asserts that the relief should be available during the period while the home was being constructed. The Appellant further submits that as the home was under construction in 2013, then the relief should apply for that year.
13. The Respondent submits that s.244(8) does not apply, as this subsection only applies to loans which are used to repair, develop or improve an existing residential premise. The Respondent further submits that the home was not completed on or before 2012 and therefore the loan does not meet the requirement of s.244(8).
14. The Appellant’s submission provided an extract from a Revenue tax and duty manual entitled [8.3.8] Relief for interest paid on certain home loans. Paragraph 14 (c) of this document indicates that *“the residence may be accepted as the individual’s sole or main residence with effect from the date of purchase of the site or, if later, the date planning permission for the construction of the residence is granted”*.
15. The Respondent submits that relief in respect of a loan taken out during the period of construction of the home was granted concessionally solely by way of Revenue practice and that the practice ceased with effect from 31 December 2012, when mortgage interest relief was abolished.
16. The Appellant further contends that the construction of the home should be classified as ‘development’ for the purposes of s.244(8). In support of this assertion the Appellant has included in its submission an extract from the Z County Council website which indicates that “development includes the carrying out of works (building, demolition alteration) on land...”.



17. The Respondent submits that development in the context of s.244(8) refers to development on an existing “residential premises”. As the home was under construction during 2013 the loan has failed to meet the requirements as set out in that subsection.

Analysis and Findings

18. Under S.244(7) it is possible to qualify a loan for relief under S.244(7)(a) or S.244(7)(b).

S.244(7)(a)

19. In order to be entitled to claim the relief under S.244(7)(a) the loan must have been taken out and used in 2012 solely to purchase an interest in the land referred to S.244(7)(b) and in respect of which operative planning permission for construction, development or improvement was received on or before 31 December 2012. But only where a residential premises, which is a qualifying premises in relation to the individual, is constructed on that land.

“ “qualifying residence” in relation to an individual, means a residential premises (situated in a EEA state) which is used as the sole or main residence of (i) the individual...”

20. S.244(7)(b) requires the interest in the land to have been acquired in 2012 using the loan envisaged in S.244(7)(a). Because the site was gifted to the Appellant, none of the loan under this appeal was used to purchase the site itself. However, some of the loan was used in defraying costs such as stamp duty and legal fees which are associated with the Appellant’s interest in the land. However, such costs could not be said to be “the purchase of an estate or interest in the land” as required by S.244(7)(a). The other amounts defrayed (not quantified in the submissions) from the loan were construction costs incurred on the land incurred in 2012. These costs



in my view do amount to the purchase of an estate or interest in the land as the associated construction attaches to the land and become part of the estate in the land.

21. I, therefore, do not accept that the loan drawn down in 2012 was used “solely for the purpose of defraying money employed in the purchase of an estate or interest in the land” because part of the loan was used for expenditure on stamp duty and legal fees related to the acquisition (by way of gift) rather than the purchase of the land and therefore did not meet the “solely “ requirement within the subsection.

22. S.244(7)(b).

In order to be entitled to claim the relief under S.244(7)(b) the loan must have been used between 1 January 2012 and 31 December 2013. The loan must be used solely for defraying money in the construction of a qualifying residential premises on land acquired in 2012 the acquisition of which was financed by way of a loan that meets the conditions of S244(7)(a).

23. As I have already pointed out, the loan drawdown in 2012 did not meet the requirements of S244(7)(a), so therefore relief under S.244(7)(b) cannot be availed of.

24. The Respondent has granted relief to the Appellants for the interest incurred in 2012 but has done so in the belief that this is by way of concession. The Respondent has withdrawn this concession for 2013.

25. It now remains to be examined whether draw-down of the loan in 2013 qualifies under S.244(8).

S.244(8).

26. The matter to be determined is whether the loan the subject of the appeal meets the requirements as set out in s.244(8). The section refers to loans which have been employed “in the repair, development or improvement of a residential premises which is a qualifying residence in relation to that individual”. The Respondent asserts that the entirety of S.244(8) is to be interpreted as applicable only to existing residential premises; that it does not apply to residential premises under



construction or incomplete at 31 December 2012. The Appellant argues that the term development can be interpreted to include construction costs.

27. The word 'development' pursuant to S244(8)(b) TCA 1997 when construed in the context of the words which surround it i.e. 'repair' and 'improvement' suggests that this word is to be understood in the context of an existing residential premises, given that a repair or improvement can only be carried out on something that already exists.

28. S.244(10) states

Relief shall not be granted in respect of interest paid on any loan to which subsection (7) or (8) applies unless any permissions required under the Planning and Development Act 2000 was granted on or before 31 December 2012, in respect of such construction, repair, development or improvement, as appropriate, and such permission has not ceased to exist.

29. S.244(7) refers to "construction", while S.244(8) refers to "repair, development or improvement" which implies that the legislature was seeking to make a distinction between "development" and "construction" within the operation of subsections (7) and (8).

30. The sense of the S.244(8) is to afford relief for loans to facilitate individuals repairing, developing or improving qualifying premises, which are complete, as opposed to being under construction, in respect of 2013 loan drawdowns.



Conclusion

31. Having carefully considered all of the submissions made by the parties, I find for the reasons detailed above, that the decision by the Respondent to refuse all of the Appellant's application for the mortgage interest relief in respect of the year 2013 was correct.
32. I determine that the Appellant is not entitled under S244 (7) to interest relief in 2013 in respect of the portion of the loan drawn down in 2012 which was used to defray stamp duty, legal fees and construction costs in 2012.
33. I determine that the Appellant is not entitled under S244 (8) to interest relief in 2013 in respect of the loan drawn down in 2013 and used in 2013 for the construction of their sole or main residence.
34. The appeal is thus determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

1st November 2019

