



05TACD2018

NAME REDACTED

BETWEEN/

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against an assessment to income tax regarding the tax year of assessment 2009.
2. During the tax year of assessment 2009, the Appellant was a director of **NAME REDACTED** Limited ('the company') and was a 50% shareholder in the company. In 2009, through a period of financial instability, the company defaulted on tax liabilities in relation to salaries, which were not fully remitted by the company. The company was unable to overcome its financial difficulties and subsequently went into liquidation.
3. On 9 June 2011, the Respondent raised an assessment to income tax in respect of the tax year of assessment 2009, in accordance with the provisions of s.997A of the Taxes Consolidation Act 1997 ('TCA 1997'). The Appellant duly appealed.
4. The Appellant, being a director and 50% shareholder in the company, accepted that he was a person with a '*material interest*' in the company in accordance with s.997A TCA 1997. He accepted that the company failed to remit certain taxes in relation to his emoluments in respect of the tax year of assessment 2009, but stated that section



997A did not operate in the manner contended for by the Respondent and that he was not liable to the income tax assessed, namely €26,657.

Legislation

5. As set out in **Appendix I** below, the relevant legislative provisions are;

- Section 997 TCA 1997 – Supplementary provisions (Chapter 4)
- Section 997A TCA 1997 – Credit in respect of tax deducted from emoluments of certain directors

Analysis and findings

6. Section 997A(2) provides that *‘This section applies to a person to who, in relation to a company (hereafter in this section referred to as “the company”), has a material interest in the company.’* Thus the provision applies to proprietary directors. Section 997A(1)(b) provides as follows;

‘[(1)(b) For the purposes of this section—

a person shall have a material interest in a company if the person, either on the person’s own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

the question of whether a person is connected with another person shall be determined in accordance with section 10.’

7. Section 997A(3) provides: *‘Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies [shall be given against the amount of tax chargeable in any assessment] raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is*



documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.'

8. The Appellant did not dispute the fact that he was a proprietary director and that tax deducted from emoluments in respect of the year 2009 had not been remitted by the company. The Appellant submitted that the company was struggling financially in 2009 and the Respondent acknowledged the financial difficulties faced by the company but stated that it was bound by the legislation in raising the assessment pursuant to s.997A TCA 1997.
9. The Appellant argued that '*emoluments paid*' in s.997A(3) referred to emoluments net of tax deducted and that the '*credit for tax deducted from the emoluments*' was nil as no credit can be deducted from net emoluments. The Respondent submitted that to interpret the provision in this manner would lead to an absurdity because tax could not be deducted by an employer from emoluments after they have been paid to an employee and that '*emoluments paid*' referred to the gross value of the emoluments. The Appellant argued that he was not entitled to a credit under s.997A and that the credit he was not entitled to was nil. The Appellant submitted that he did not receive the benefit of the tax and that he was not liable to the income tax assessed.
10. The Respondent submitted that emoluments are paid net but that an employee in receipt of emoluments obtains the benefit of the gross amount in accordance with the law, where tax deducted has been remitted to the Respondent. However, as the company in this appeal did not remit to the Respondent the tax deducted, a credit could not be available to the Appellant in respect of tax not remitted. The Respondent submitted that s.997A does not alter the amount of tax due in respect of emoluments and that where tax due has not been remitted and discharged, it remains payable.
11. The Appellant submitted that the provision gave rise to an absurdity on its face which should be interpreted in favour of the taxpayer. Section 997A(3) provides that '*no credit for tax deducted from the emoluments paid by the company shall be given against the amount of tax chargeable in any assessment raised on the person ... unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General*'. I am satisfied that there is no inherent ambiguity in the statutory wording contained in section 997A and that the words should be afforded their ordinary and natural meaning. The interpretative approach to be applied is a literal one taking into account the jurisprudence in relation to the



interpretation of taxation statutes based on a long line of authorities 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 do not accept the submission of the Appellant i.e., that a literal interpretation of the words contained in section 997A would give rise to the outcome contended for by the Appellant.

12. Section 997A TCA 1997, operates to prevent a proprietary director from obtaining the benefit of a tax credit in respect of his emoluments where tax deducted has not been remitted to the Respondent. The Appellant accepted that the company failed to remit income tax in relation to his emoluments for the tax year of assessment, 2009.

Conclusion

13. The wording of s.997A is clear in that it provides that '*no credit shall be given*' in the circumstances which arise in the within appeal, namely, where the tax deducted by the company in respect of the emoluments of the Appellant has not been remitted to the Respondent. Thus I do not consider that I have discretion to depart from the clear statutory wording of s.997A and as a result, I determine that the assessment dated 9 June 2011 in the sum of €26,657 shall stand.
14. This appeal is hereby determined in accordance with section 949AK TCA 1997.

APPEAL COMMISSIONER

April 2018

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.



Appendix I

Section 997 TCA 1997 – Supplementary provisions (Chapter 4)

(1) No assessment under Schedule E for any year of assessment need be made in respect of emoluments to which this Chapter applies except where –

(a) the person assessable, by notice in writing given to the inspector [...], requires an assessment to be made,

(b) the emoluments paid in the year of assessment are not the same in amount as the emoluments which are to be treated as the emoluments for that year, or

(c) there is reason to suppose that the emoluments would, if assessed, be taken into account in computing the total income of a person who is liable to tax at the higher rate or would be so liable if an assessment were made in respect of the emoluments;

but where any such assessment is made credit shall be given for the amount of any tax deducted [...] from the emoluments [against the amount of tax chargeable in the assessment on the person assessed]³.

[(1A)[Subject to sections 959AB and 959AD], an assessment under Schedule E in respect of emoluments to which this Chapter applies shall not be made for any year of assessment –

(a) where paragraph (a) of that subsection applies, unless the person assessable has requested the assessment –

(i) in the case of any year of assessment prior to the year of assessment 2003, within 5 years, and

(ii) in the case of the year of assessment 2003 or any subsequent year of assessment, within 4 years,

from the end of the year of assessment concerned, and

(b) where paragraph (b) or (c) of that subsection applies, at any time later than 4 years from the end of the year of assessment concerned.]

(2) Where an employer pays to the Revenue Commissioners any amount of tax which, pursuant to this Chapter and any regulations under this Chapter, the employer has deducted from emoluments, the employer shall be acquitted and discharged of the sum represented by the payment as if the employer had actually paid that sum to the employee.



[(3) Where the inspector, in accordance with the provisions of Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) sends a statement of liability to an employee, that statement shall, if the inspector so directs and gives notice accordingly in or with the statement sent to the employee, be treated in all respects as if it were an assessment raised on the employee, and all the provisions of the Income Tax Acts relating to appeals against assessments and the collection and recovery of tax charged in an assessment shall accordingly apply to the statement.]

Section 997A TCA 1997 – Credit in respect of tax deducted from emoluments of certain directors

[(1) (a) In this section—

“control” has the same meaning as in section 432;

“ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company.

(b) For the purposes of this section—

(i) a person shall have a material interest in a company if the person, either on the person's own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

(ii) the question of whether a person is connected with another person shall be determined in accordance with section 10.

(2) This section applies to a person to who, in relation to a company (hereafter in this section referred to as “the company”), has a material interest in the company.

(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies [shall be given against the amount of tax chargeable in any assessment] raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.

(4) Where the company remits tax to the Collector-General which has been deducted from emoluments [paid by the company in a year of assessment, the tax remitted for that year of assessment] shall be treated as having



been deducted from emoluments paid to persons other than persons to whom this section applies in priority to tax deducted from persons to whom this section applies.

(5) Where, in accordance with subsection (4), tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies, the tax to be so treated shall, if there is more than one such person, be treated as having been deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.]

[(6) Where, in accordance with subsection (5), the tax to be treated as having been deducted from the emoluments paid to each person to whom this section applies exceeds the actual amount of tax deducted from the emoluments of each person, then the amount of credit to be given for tax deducted from those emoluments shall not exceed the actual amount of tax so deducted.]

[(7) Notwithstanding section 960G and for the purposes of the application of this section, where a company has an obligation to remit any amount by virtue of the provisions of—

(a) the Social Welfare Consolidation Act 2005 and regulations made under that Act, as respects employment contributions,

(b) Part 18D and regulations made under that Part, as respects universal social charge, and

(c) this Chapter and regulations made under this Chapter, as respects income tax,

any amount remitted by the company for a year of assessment shall be set—

(i) firstly against employment contributions,

(ii) secondly against universal social charge, and

(iii) lastly against income tax.

[(8) A person aggrieved by a decision of the Revenue Commissioners in relation to a claim by that person for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, may appeal that decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that decision.]

