



**Ref: 108TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This determination relates to an appeal against assessments in accordance with section 441 Taxes Consolidation Act 1997 as amended (TCA 1997). It concerns the operation of the surcharge on undistributed income of service companies.
2. If the Appellant proves that the “principal part” of its taxable income in the years 2012 and 2013 was derived from “non-professional” services, the Appellant wins the appeal and the assessed surcharge (additional tax) will not be payable. If the Appellant fails to prove his case then the appeal fails and the tax assessed is payable.
3. This Appeal and determination consider the meaning of “principal part” within section 441 TCA 1997. It examines what is meant by “profession” and “professional services” and what activities of the Appellant are “non-professional”. In this respect, the meaning of these terms is examined by a review of previous tax law cases.
4. This appeal determination decides whether the classification of income as between what is professional and non-professional, put forward by the Appellant for the years 2012 and 2013, is correct or not. It analyses the income of the Appellant in the years 2012 and 2013 by reference to the classifications set out by the Appellant.
5. This is a complex appeal because of the differing nature of the constituents of the Appellant’s income in 2012 and 2013 that need to be examined to arrive at a decision. It

is also complicated because the meaning of ‘profession’ and ‘professional services’ is not defined in statute. For that reason, I have set out below a guide to the contents of this determination.

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## Background

6. The Appellant is a close company, which commenced trading in 2011. It operates an accountancy practice previously carried on by the main shareholders REDACTED and REDACTED. REDACTED are members of the Institute of Chartered Accountants in Ireland ('the Institute') hold practising certificates licenced by the Institute and carry on their public practice through the Company, as a Member Firm.
7. In January 2015 the Appellant received a notification of a Revenue audit. The notification stated that the Appellant was under review for the purpose of establishing whether the professional service close company surcharge should be imposed on the profits for the accounting period 2012, 2013 and 2014. It was clarified by the Respondent at a meeting in early March 2015 that the only reason for including the accounting period ending 30<sup>th</sup> April 2014 was to encompass within the audit scope the payment due date of the service company surcharge, arising under section 441 TCA 1997, for the accounting year ended 30<sup>th</sup> April 2013 only, and calculated after deducting distributions made from distributable profits, 18 months after the year end.
8. Having examined the Corporation Tax returns of the Company for the period ended 30<sup>th</sup> of April 2012, and for the year ended 30<sup>th</sup> of April 2013, the Respondent is of the view that the principal activity of the Company was the provision of accountancy services and that therefore the principal part of the Company's income derives from the carrying on of a profession or the provision of professional services. The Respondent therefore believes that the Company is a service company under the provisions of section 441 TCA 1997 and that the surcharge provided for in this section must be applied.
9. The Appellant contends that the principal part of the Company's income in the period ending 30<sup>th</sup> of April 2012 was derived from the provision of bookkeeping services and from a one-off non-professional assignment in relation to advice on the redemption of shares held by REDACTED in D CLIENTS. Accordingly, the principal part of the Company's income did not derive from the carrying on of a profession or the provision of professional services.
10. The Appellant contends that for the year ended 30<sup>th</sup> April 2013, the principal part of the Company's income derived from the provision of bookkeeping services. Accordingly, the



principal part of the Company's income did not derive from the carrying on of a profession or the provision of professional services.

11. In these circumstances the Appellant argues that the Company is not for the periods in question a service company under the provisions of section 441 and therefore it is not necessary to apply a surcharge for either 2012 or 2013.
12. On 27 April 2018 the Respondent issued an amended notice of assessment to Corporation Tax to the Appellant for period ended 30 April 2012 adding a surcharge liability under section 441TCA 1997 of €28,469 together with a related 10% late filing surcharge of €2,847, totalling additional tax payable of €31,316.
13. On 27 April 2018 the Respondent issued an amended notice of assessment to Corporation Tax to the Appellant for year ended 30 April 2013 adding a surcharge liability under section 441TCA 1997 of €59,943 together with a related 10% late filing surcharge of €5,994 totalling additional tax payable of €65,937.
14. On 16 May 2018, the Appellant appealed both assessments to the Tax Appeals Commission.
15. A hearing of this Appeal, under Chapter 4 Part40A TCA 1997, was held on 12 February 2020 at the Offices of the Tax Appeals Commission.



## Legislation

1. Section 441 TCA 1997 provides for a surcharge on the undistributed income of service companies. The definition of a service company is contained in section 441(1). Section 441 (2) then deems certain companies not to be service companies. Section 441 provides as follows:

*“(1) In this section, “service company” means, subject to subsection (2) –*

- (a) a close company whose business consists of or includes the carrying on of a profession or the provision of professional services,*
- (b) a close company having or exercising an office or employment, or*
- (c) a close company whose business consists of or includes the provision of services or facilities of whatever nature to or for –*
  - (i) a company within either of the categories referred to in paragraphs (a) and (b),*
  - (ii) an individual who carries on a profession,*
  - (iii) a partnership which carries on a profession,*
  - (iv) a person who has or exercises an office or employment, or*
  - (v) a person or partnership connected with any person or partnership referred to in subparagraphs (i) to (iv);**but the provision by a close company of services or facilities to or for a person or partnership not connected with the company shall be disregarded for the purposes of this paragraph. (emphasis added)*

2. Certain companies are deemed not to be service companies for the purposes of the surcharge as follows:

*(2) Where the principal part of a company's income which is chargeable to corporation tax under Cases I and II of Schedule D and Schedule E is not derived from –*

- (a) carrying on a profession,*
- (b) providing professional services,*
- (c) having or exercising an office or employment,*
- (d) providing services or facilities (other than providing services or facilities to or for a person or partnership not connected with the*





*company) to or for any person or partnership referred to in subparagraphs (i) to (v) of subsection (1)(c), or*  
*(e) any 2 or more of the activities specified in paragraphs (a) to (d), the company shall be deemed not to be a service company.*  
(emphasis added)



## MATTERS NOT IN DISPUTE

The following matters are not in dispute between the parties:

- The Appellant is a close company.
- The Appellant is an accountancy practice which is regulated by the Institute of Chartered Accountants in Ireland (“ICAI”).
- The Appellant provides professional services and non-professional services.
- The Appellant accepts that certain of its income in the relevant years 2012 and 2013 is income from carrying on a profession and/or providing professional services for example accountancy, consultancy and certain taxation services.
- It is agreed that the analysis of the Company’s income for the period ending 30 April 2012 and year ending 30 April 2013 as set out in Appendices 6 and 8, respectively, is correct in respect of the categories of income and the quantum of income. What is not agreed between the parties is the classification of that income between “Professional Services” and “Non-Professional Services”.
- It was agreed between the parties that the basis for classifying taxable income of the Company, as between professional income and non-professional income, should be based on the gross fee income received. The apportionment of that fee income is based on the recorded timesheets of staff and directors involved in the Company’s trade. The chargeable hours, as set out in these timesheets, was used in this apportionment, rather than billed (recovered) hours.
- It was agreed between the parties that the ‘principal part’, within section 441, is understood to mean > 50%.



## EVIDENCE

### Documentary Evidence

16. The documentary evidence furnished in evidence is set out in Appendix 1. The evidence included *inter alia*:
17. A summary and analysis of the Appellant's income for period ended 30 April 2012 (see Appendix 6)
18. A summary and analysis of the Appellant's income for the year ended 30 April 2013 (see Appendix 8)
19. Excerpts from these documents are cited in the analysis below.

## WITNESS EVIDENCE

### Mr. P

Mr. P, is a qualified accountant and a director of the Appellant Company. He gave sworn evidence on behalf of the Appellant as follows:

#### *The Company*

20. The Company was incorporated on the REDACTED. Prior to that it was run as a partnership, called the REDACTED. The Company is regulated by the Institute of Chartered Accountants in Ireland (ICAI) but did not receive that authorisation until February 2012.  
During the first period of trade to the 30th April 2012, the partnership practice continued and carried out most of the regulated accounting activities during the period. The partnership of REDACTED ceased on the REDACTED.
21. The Company had 25 staff inclusive of three directors. Of those 25 staff nine staff were professionally qualified and sixteen were unqualified. The nine qualified included the three directors and a member of the Institute of Taxation of Ireland.



### *Clients*

22. Clients fell into two categories, being **D CLIENTS** and **S CLIENTS**. The **D CLIENTS** accounted for approximately 66% of the business in 2013... **REDACTED**. **S CLIENTS** included **REDACTED** small businesses.

### *Billing Clients*

23. Each person in the office accounts for their time on a quarter hour basis and the Company produces a time report on each job/client. Book-keeping, payroll and the preparation of management accounts are billed separately from the statutory audit services. The Company also bills for off-site storage where they keep all the books and records for the clients.

### *Services provided*

24. To **D CLIENTS**:  
Services to **D CLIENTS** included: a book-keeping service, a payroll service, preparation of management accounts, preparation of financial statements and the statutory audit at the end of the year to include Corporation Tax Return and CRO return.

Because of the group structure in place, each of the individual **D CLIENT** companies were subject to a statutory audit. Each **D CLIENT** consisted of an **X** related holding company with a **D CLIENT** company beneath this holding company.

25. To **S CLIENTS**:  
Services to **S CLIENTS** included: a book-keeping service, a payroll service, production of management accounts and/or financial statements, Corporation Tax returns and CRO returns. Typically, these clients, because of their small size did not require a statutory audit.

### *Bookkeeping*

26. The book-keeping service associated with the **D CLIENTS** entailed all of the clients' invoices being sent to the Company's offices in **REDACTED** on a monthly basis. Here, they



were processed through their respective ledgers. The processing consisted mainly of scanning or manual input into a book-keeping computer system called **SOFTWARE A**. These tasks were carried out by book-keeping staff. Book-keeping staff did not hold, nor were studying for, an accountancy qualification. The book-keeping process is undertaken in a discreet section of the Company's offices. The staff performing this task are not accountancy students. They are generally people who do not do professional exams. Their function is to carry out either processing or scanning activities.

### *Payroll*

27. The Company also provided a payroll service. The staff that worked in the Payroll Division did not hold a professional qualification nor were they accountancy students. On a weekly basis, the clients' staff hours were either emailed or faxed to the Company's office. The payroll staff input the hourly information into a computer programme called **SOFTWARE B**. This system would calculate the net salary for each staff member and would also effect payment by electronic funds transfer.

### *Management Accounts*

28. Another service to the **D CLIENTS** was the production of management accounts for each client. The management accounts were used to show clients how their business was performing and also used to advise shareholders or investors of the business. The information to generate the management accounts was taken from the information inputted into the **SOFTWARE A** computer programme. The information taken from **SOFTWARE A** is transferred to a programme called **SOFTWARE C**, which was specifically written for **D CLIENTS**. **SOFTWARE C** analysed the trading results of each D CLIENT by product and **REDACTED** within **D CLIENTS**. The Appellant Company did not design or write the **SOFTWARE C** programme.
29. This work was done by junior staff members or unqualified accounts staff members. Junior staff would be graduates from college who have decided that they are going to study accountancy. Typically, they would produce either on a monthly basis or a quarterly basis (in the vast majority of cases). Having uploaded the data into the **SOFTWARE C** system, this would then generate a set of management accounts. It was purely a mechanical exercise.



30. Following this, the management accounts were reviewed by a manager who would be a qualified accountant. Clients would be sent a summary of the accounts with a covering email to include comments on the management accounts such as comparisons of turnover with a previous period and whether gross profit margins were in line with sector averages.

#### *Financial Accounts & Audit*

The next service relates to the clients' financial accounts. The accounts that are generated from **SOFTWARE C** are management accounts but they are not statutory financial statements (as required under the Companies Acts). In order to produce statutory financial statements, the data within the **SOFTWARE C** computer programme is transferred on to a separate computer programme called **SOFTWARE D**. This programme, **SOFTWARE D**, generates the statutory accounts for each client. This work would be carried out by junior staff.

31. The Company would hire graduates from college who have decided that they are going to pursue an accountancy career. They would begin to assemble the accounts file and upload the trial balance from **SOFTWARE C** to **SOFTWARE D**.
32. A junior member should be able to produce a set of financial statements simply because it is generated by the **SOFTWARE D** computer system. They may not know that they're right as they are only linking figures from **SOFTWARE C**, the management accounts package, to **SOFTWARE D**, the financial statements package. It's an automated process.
33. The junior staff member assembles the files relating to the financial accounts together with a file which would have a set format. For every balance sheet item there would be a breakdown of the balance sheet figures. For example, creditors, debtors, bank, that would be analysed so that the person reviewing them, the manager or supervisor, would be able to flick through the file and see the figure on the balance sheet and its breakdown. The witness described the process up to this point as bringing the accounts "to trial balance stage".
34. A Supervisor or the Manager would review the file and read the financial statements generated from **SOFTWARE D** in their totality to see that they look right. For example,



for **D CLIENTS** this would be a check as to how they compare with sector averages, gross profit margin, and whether wages are in line with what would be expected and they would make any adjustments. A supervisor may not necessarily be qualified but would have a great deal of experience and a manager would certainly be qualified.

35. The next stage of the process is to undertake an audit of the financial statements. The manager would verify various items making up the financial statements. A lot of the verification documentation and workings have been put on the file by junior staff for them. For example, if the manager or supervisor wishes to verify a list of creditors, over a certain figure, and he wishes to get backup statements, the junior member of staff will have already photocopied the backup statements and put them behind the listing of creditors on the files.

36. In relation to **S CLIENTS**, the witness said that the fees

*“would be in the main for non-audit. So there would be book-keeping...It would be getting the accounts to the trial balance stage”*

37. In evidence Mr. **P** indicated that the fees from **S CLIENTS**, classed as non-professional, under the heading “Fees (incl. all services)” was up to 75% bookkeeping with 25% being the bringing of financial accounts up to Trial Balance stage.

#### **Classification of income between Professional and Non-Professional:**

38. The Appellant produced an analysis of the categories of services it provides. This analysis is reproduced in Appendix 4. In evidence Mr **P** identified which activities he classified as generating non-professional income and professional income.

39. It is the Company’s contention that the book-keeping, payroll and management accounts related income is all non-professional. The preparation of financial statements would, in the Company’s view, generate both non-professional and professional income. Financial statements preparation would be done by a junior person who would be a junior accountant with charge-out rates between €30 and €50 per hour and they would be summarising, bringing the financial accounts to Trial Balance stage. This element is classified as non-professional. The professional income element of financial accounts preparation relates to the manager’s review of the financial accounts, and the work of



the director in his engagement with the client as it relates to the financial statements preparation, as distinct from the audit of financial statements (which is also professional service income generating activity).

40. A junior person with the lowest charge-out rate, and a semi-senior with a higher charge-out rate would be involved in bringing the accounts to Trial Balance stage. The Appellant estimated that three quarters of the latter's time was given to bringing the accounts to Trial Balance stage and he maintained that bringing the accounts to trial balance stage is book-keeping.
41. In relation to the classifications of income in Appendix 4 the witness gave the following testimony:
- A. *"I would say that (a), (b), (e), (f), (g), part of the audit bringing the books to trial balance stage, part thereof and (o).*
- Q. *Professional or non-professional?*
- A. *Non-professional."*

### **Special work €294,348 carried out in 2012**

42. Within the income for the period ended 30 April 2012 there is a recorded income item called "Special Work". This generated fees of €294,348. This was a once-off assignment that the Company received from REDACTED.
43. The REDACTED ...( Special work €294,348 carried out in 2012 related to share valuations in) the D CLIENTS.
44. The valuation of the shares REDACTED was determined by provisions in the Memorandum and Articles of Association. In 2011/2012 REDACTED wished to accelerate the buyback process (in) D CLIENTS. The Appellant was asked to undertake an assignment whereby, they as auditors, could explain the financial implications of the new proposals / share valuations to each D CLIENT.



45. Within this amount is an amount of €50,000 which was awarded to the Company unexpectedly by REDACTED for a “job well done” in relation to the overall assignment.

### **Cross examination of Mr. P by counsel for the Respondent**

#### Analysis of 2012 Income

46. Mr. P was questioned about the special assignment undertaken by the company in 2012 which generated fees of €294,348 and classified by the Company as special work:

*Q You were asked to give consultancy services in relation to that work?*

*A It was fees given for advice.*

*Q ...Advice is a very specific term ...You were using your professional expertise to provide that advice?*

*A Yes, I was using my expertise.*

*Q And you understand fundamentally why I'm asking that question in relation to 2012?*

*A I do.*

*Q You do because if that is classified as professional fees which I think you've just admitted it is, then that puts you into the surcharge threshold for that particular year?*

*A I realise where this is going, yes, I do. There's an element of experience on it but I would say that because how it was set out in the Memorandum and Articles of Association it was very descriptive as to how the valuation was to be arrived at.*

#### Analysis of 2013 income

47. The Appellant was questioned about the analysis of the 2013 Income as follows:

*Q So the figure €376,421 can you just explain that figure to me?*

*A “That figure is what we consider as non-professional for getting the books and records to trial balance stage... it doesn't specifically have invoices for book-keeping, payroll but it is the figure that we have extracted from the overall figure which is junior work attached to bringing the accounts from management accounts position to final accounts position... It's out of the realm of the basic book-keeping services but it is junior work in inputting*



trial balances from the **SOFTWARE C** platform up into the ...the **SOFTWARE D** software.

Q. Yes, the end accounts, the end goal accounts?

A. Yes...

Q. you said junior staff?

A. Junior staff, non-qualified.

Q. And when you say junior staff who are they exactly?

A. They would be first year apprentice.

Q. Accountancy professionals?

A. Yes, in from college.

Q. Right and all of that would be related to the work that they do and who would manage those. I mean are they working in conjunction with somebody else?

A. They would be -- the teams work as follows. There is a partner at the lead. Under that there is a Manager, Supervisor, semi-senior, juniors.

Q. So if I understand you, there's a team there and they are on that team and you'd have senior managers all working together because they are not doing it on their own because as you said they are only first year...there is someone else guiding their hand, is that correct?

A. Well it's a relatively simple process. So after for the first couple of months obviously when they are in the office they would be advised how to do it but you would expect them after a period of a couple of months to be able to run that process themselves.

Q. that's work entailed then to bring the client's records to trial balance stage, is that correct?

A. Yes, to accounts, to **SOFTWARE D**, to statutory accounts presentation...

A. May I add as well that the audit file is set up so that the Supervisor or Manager can review it. So the junior staff member would put things like creditor statements on the file, photocopy creditors statements, photocopy lead schedules so that the file can be as complete as possible before going to a more expensive staff member.

...Yes, I presume though it is not just that simple. I presume even while that's taking place there must be some interaction you know while that's going on. Again it's a small point but there must be some interaction?...

A. Well I would agree with you in so far as if the junior person had a query they would obviously go to the -- you know they'd say listen I don't understand



*this.*

*Question by the COMMISSIONER:*

*So, are you saying that the allocation you have under non-professional is the preparation of the financial statements off the computer system up to financial statement level and then it is handed over to the professional?*

*A. Yes.*

*Q. I suppose would you say that that work itself, is that a fundamental part of the overall goal you could say to produce the end accounts. That's a fundamental part. In other words you can't produce the service without that work being done?*

*A. No, I can't.*

*Q. So would you agree with me to say that it is fundamental in order for you to provide the service. In other words what you're saying, the professional, the accountancy, you know that element at the end of it, that that must be done?*

*A. Absolutely and no more so than I could not produce a set of accounts if the books weren't written up.*

*Q. Yes, exactly but there is more of an element you could say, that's it not just data input at this stage. There is more of a team element at this stage?*

*A. It is -- each case would have to be looked at individually.*

48. In relation to work done in 2013 for **S CLIENTS**, Mr. **P** testified in the following terms:

*A. "some of the stuff(records)comes in from the client in very poor condition... so there is some book-keeping work in there obviously...and we input and junior staff inputted that and then produce a trial balance and what I'm saying is that up to the trial balance stage that is the €336,000 figure, once they press the button a set of statutory accounts is produced and from that then the manager or the supervisor must look at those accounts; examine them and see that they're right and in this case the vast majority of these cases they do not require*



*and audit because of their size. Now the accounts are produced for them. So the Manager's position is to look at those accounts, in conjunction with their knowledge of a sector and make a judgement call if they're correct. Now they may go back to the junior staff member and say listen, there is a figure there in sundry expenses that I need analysed and they would throw it back to them because they cannot do that work at their charge out rate"*

### **Testimony of the Respondent**

49. During the hearing the Respondent provided the following testimony. The Respondent indicated that in raising the assessments on the Appellant for the periods 2012 and 2013, the measure of income between professional and non-professional activities was based on the fee income analysis presented by the Appellant to the Respondent during the course of the Revenue audit. The Respondent, said

*Respondent: "obviously the income in taxation terms is normally net after deducting expenses but to arrive at the apportionment of the professional versus non-professional I would have focused on the actual fee income ... I would have followed ... the invoice listing that was given to us by the Appellant".*

*COMMISSIONER: You are saying that the surcharge applies to the net income of the company if it is found that a greater proportion of its gross fee income is professional, is that correct?*

*Respondent: Yes, that would be correct to the extent that the fee income dictates a proportion of the net income.*

*COMMISSIONER: do you agree that the way you determine the proportion of your net income that's professional or non-professional is it on your turnover or is it on some other different basis of calculation?*

*MR. P: I think it can be only on your turnover.*

*COMMISSIONER: So there is no disagreement between the parties as to how to calculate it?*

*MR. P: No.*

50. In earlier testimony, Mr P indicated that the time sheets which apportioned the fee income received, between professional and non-professional activities, and as set out in





Appendices 6 and 8, was based on chargeable or billable hours within timesheets (as opposed to actual hours billed within fees charged)



## Case Law

51. Case Law cited in the Book of Authorities supplied to the Tax Appeals Commission in advance of and during the hearing included:

Inspector of Taxes v Kiernan (1981) IR 117

The Commissioners of Inland Revenue v Maxse (1919) 12 TC 41

McGrath V McDermott (1988) IR 258

Menolly Homes Ltd v Appeal Commissioners (2010) IEHC 49

The Revenue Commissioners v O’Flynn Construction (2013) 3 IR 533

Gaffney v Revenue Commissioner (2013) IEHC 651

52. Case law cited by and supplied by the Appellant during the hearing:

Mac Giolla Mhaith (Inspector of Taxes) v Cronin & Associates Ltd (1984)

Emil Prodanov v Revenue Commissioners (2016 IEHC 708)

53. Case law cited by me in my determination:

Dunne Stores v The Revenue Commissioners (2019)

54. Both parties cited the case of The Commissioners of Inland Revenue v Maxse (1919) 12 TC 41 in support of their position. The Appellant argued that this case confirmed that where you are carrying out diverse activities (professional and non-professional) within a company and where some of the non-professional activities are entwined or linked to the professional activities, it is appropriate to segregate out the constituent elements into professional and non-professional. The Respondent cited this case in Tax Briefing 48 (see Appendix 2) to assist in the definition of a “profession”.
55. The Appellant cited a number of the above cases to support its views on the interpretation of taxation statutes. The Respondent stated during the hearing that it “totally agreed” with the Appellant on all its arguments about interpretation of statutes.



## **SUBMISSIONS-Appellant**

56. The Appellant, through Counsel, asserted that Section 441 TCA 1997, is a surcharge in respect of professional services; that the legislation is quite clear in that it is specific to professional services and that it does not apply to non-professional services; that the legislation does not define what is meant by “professional services”; that case law provides a definition of “profession”.
57. The Appellant refutes the proposition it believes is being put forward by the Respondent that the definition of “profession” can be extended to include non-professional work because it is carried out in connection with professional work and thereby brings those non-professional services within the ambit of the definition of professional services for the purposes of Section 441 TCA 1997.
58. The Appellant asserted that to determine whether some work or activity is a profession, you must look at whether it is skilled or unskilled work. The Appellant submitted that if the legislation provides for the inclusion of an activity then, by inference, certain activities must be excluded; that the principal part of the work carried out by the Company relates to non-professional work and that this is evidenced by extrapolating from the timesheets of the staff employed, from the nature of the work carried out for clients and from the persons employed to do the work. The Appellant further submitted that simply because work is carried out in tandem with professionals and their professional work does not bring it into the professional rule under section 441 TCA1997.
59. The Appellant argued that sub-section (2) of section 441 TCA1997 says:

*"Where the principal part of a company's income which is chargeable to corporation tax under cases 1 and 2 of schedule D and E is not derived from (a) carrying on a profession, (b) providing professional services...The company shall be deemed not to be a service company."*

By failing this ‘principal part’ test, the Company is deemed not to be a service company for the purposes of the surcharge. Because the meaning of “profession” is not defined in the statute, the Appellant asserted that you must look to common law to ascertain what is meant by “profession”.



60. The Appellant cited the case of Commissioners of Inland Revenue and Maxse. This is an English tax law case relating to excess profits duty. The court looked at the work carried out by one individual, who was a business owner and also a magazine editor and journalist, to see whether the work carried out by him was professional or not. The Court of Appeal held that the Respondent in the case was both exercising the profession of a journalist and magazine editor in respect of which he was entitled to exemption from excess profits duty and this activity was separate from carrying on the business of publishing a magazine in respect of which he was assessable to duty, and that in arriving at the profits of the publishing business (subject to duty) a reasonable allowance must be made for his exempt professional service as editor and contributor to the magazine.
61. The Court examined the question of what is a profession? Scrutton, L.J. stated:

*"the next question is what is a profession? I am very reluctant finally to propound a comprehensive definition. A set of facts not present to the mind of the judicial propounder and not raised in the case before him may immediately arise to confound his proposition but it seems to me as at present advise, that a profession in the present use of language involved the idea of an occupation requiring either purely intellectual skill or if any manual skill as in painting and sculpturing or surgery, skill controlled by the intellectual skill of the operator as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word profession used to be confined to the three learned professions, the church, medicine and law. It has now I think a wider meaning. It appears to me to be clear that a journalist whose contributions have any literary form as distinguished from a reporter exercise of profession and that the editor of a periodical comes in the same category. It seems to be equally clear the proprietor of a newspaper periodical controlling the printing, publishing and advertising but not responsible for the selection of the literary artistic contents does not exercise a profession but a trade or business other than a profession."*

The Appellant argued that this case supports its assertion that within the Company there are qualified accountants who are professionals and can be considered to be exercising a profession but you have also got a book-keeping activity which is not considered professional work.



62. The Appellant believes that there is a clear principle in the *Maxse* case, the principle being that you can break down the constituent elements of the diverse activities in a company to derive a view as to the nature of those activities.
63. The Appellant cited the case of *IRC v Ransom (William) & Son Ltd (1918)* where a chemical manufactory had as an ancillary a farm for the growth of herbs. Though the company's accounts did not distinguish the two profits, documents existed from which the profits of the farm could be computed and exempted from taxes as profits of husbandry. The Appellant asserts that in this case even though the accounts of the company didn't distinguish between professional and non-professional activity (in that case it is husbandry and growth of herbs), because the information was available to make that distinction, then they were entitled to look at the work that was done as opposed to the general profit that was returned by the company.
64. In this appeal you have a profit derived by the Company but you are able, according to the Appellant, to elicit from the information provided by the directors (and the evidence they submitted to the Respondent and at the hearing) of the underlying work, the constituent parts of all the work carried out in 2012 and 2013 by the Company, broken up into the different constituent elements. By this reasoning, the Appellant argued that you can legitimately identify what is book-keeping, what is not book-keeping, what is correctly considered professional and what is correctly considered non-professional.
65. The Appellant cited the case *Mac Giolla Mhaith (Inspector of Taxes) v Cronin & Associates Ltd (1984)* stating that the Court in that case believed it could not engage in extending the definition of the word "profession" where the definition of the word itself was unclear. The Appellant submitted that the Respondent is seeking to extend the definition of "profession"; but in the light of the fact that the word "profession" continues to remain unclear, then, in the absence of clear statutory authority, the Respondent ought not to endeavour to expand the definition.
66. The Appellant asserts that Tax Briefing 48 prepared by Revenue argues work such as book-keeping undertaken in connection with professional services brings that activity into the professional sphere and therefore, the profits from that work should be included in the professional profits whereas the Appellant says that is incorrect. The Appellant says that book-keeping does not become professional work just because it's done up to



trial balance stage and someone else takes over that work and puts an intellectual skill to it, to change it into something else or to provide professional advice on it. The Appellant stated that the '*in connection with*' phrase used in Tax Briefing 48 is not in the tax legislation.

**Interpretation of Statutes:**

67. As outlined above, the Appellant asserts that section 441 TCA 1997 refers to professional or profession; it does not refer to professional plus something else; that as seen from the Maxse case that professional means bringing an intellectual skill to an activity; that the Respondent is not entitled to extend the definition of the term profession or professional services by adding on 'in connection with' because those words are not in the legislation. In support of this line of argument, the Appellant cited and quoted from a number of taxes dealing with the interpretation of tax statutes including:

*Revenue Commissioners v Doorley (1933), IR750; Inspector of Taxes v Kiernan (1981) IR 117; McGrath V McDermott (1988) IR 258; Texaco (Ireland) v Murphy (1991); Cork County Council V Whillcock (1993); DPP v Moorehouse (2006); Menolly Homes Ltd v Appeal Commissioners (2010) IEHC 49; Gaffney v Revenue Commissioner (2013) IEHC 651; DPP V Perennial Freight Ltd (2015); Bookbinders v Revenue Commissioners (2016).*

I have considered and noted the Appellant's observations and arguments about these cases in my deliberations. The Respondent stated at the hearing that he did not dispute the Appellants arguments about how to interpret taxation statutes. I will refer to this issue later in the determination.

68. The Appellant submitted that the principles of EU Law are instructive as to the appropriateness of extending a legislative definition, where that definition can impose a financial consequence on a citizen. The Appellant sited the High Court case, Emil Prodanov v Revenue Commissioners (2016 IEHC 708) and highlighted its guidance on the EU Law principle of legal certainty.

At paragraph 43 it says:

*"There are other principles of EU Law that strongly militate against the interpretation of the definition of motor caravan accepted by the Appeal Commissioner. The most obvious is the principle of legal certainty. That*



*principle requires that the rules imposing financial consequences or obligations on persons must be clear and precise so that those persons may know without ambiguity precisely what their rights and obligations are and may take steps according. In Traum EOOD case C492/12 the Court of Justice stated 'the principle of legal certainty, the... of which is the principle of protection of legitimate expectation requires on the one hand the rules must be clear and precise and on the other that their application must be foreseeable by those subject to them. It must be pointed out that the principle is to be observed all the more strictly in the case of rules liable to entail financial consequences in order that those concerned may know precisely the obligation which such rules impose.'*

69. A summary of the Appellant's submission above is as follows:

The Appellant asserted that the definition of 'profession' or 'professionals' is clear in that it requires bringing of intellectual skill to a particular subject and it is accepted that accountancy is a profession; it is also accepted that book-keeping is a non-professional work; and to try and bring the latter under the rubric of professional work that is carried out in connection with it, is to seek to extend the definition; if that is the case there should be a clear definition of 'professional' to incorporate or set out that provision; that such a definition is not there; and to do that, the Respondent is asking the Tax Appeals Commission to, effectively, usurp the role of the Oireachtas in reading in such an understanding of the definition; and that there is a maxim for statutory interpretation which effectively says "*when you include you exclude.*" called "*unius est exclusio alterius*"; that the legislation has expressed profession to be subject to the surcharge and by that it hasn't extended it to work that is non-professional.

So therefore, by expressing professional services (to be subject to a surcharge) it is excluding any non-professional work even if it is carried out in connection with professional services. Based on the information provided, in 2013, in respect of the work carried out by the company they have used qualified and unqualified staff. The Appellant has been able to evidence by timesheets the work carried out by the qualified and unqualified staff and in some cases if there is a book-keeping element, even if that was carried out by a qualified person it is still book-keeping; using these timesheets the Appellant has been able distinguish correctly the nature of the work carried out and they have set out clearly the professional work and the non-professional work. Using



this approach, it is argued that the greater part of the Appellant's taxable income is non-professional and therefore the Company is not subject to the surcharge on undistributed income for that year.

70. In respect of the 2012 income it is asserted that even if the special assignment were to be classified as professional, that the €50,000 paid by REDACTED in addition to the contracted amounts, should be classed as non-professional as it was a payment not tied to a skilled activity.



## **SUBMISSIONS-Respondent**

71. The Respondent, through Counsel, asserted that the Appellant's reliance on the Maxse case was unfounded; that the latter case was about a professional person who ran a business (a monthly magazine); that that business was a non-professional business run by a person who was a professional; what the court in the Maxse case is saying is that you should be able to separate out the professional person's contribution from the non-professional business; that you cannot say the business of the magazine was professional when it was not.
72. By contrast, in this appeal, the Respondent asserts that the Appellant is a professional business, with non-professional elements; this professional business is run by professionals (regulated accountants); that the Appellant is artificially removing or classifying aspects of the business into a category claimed to be non-professional; that the Appellant is asserting that Revenue accept that book-keeping is a non-professional activity for the purposes of section 441 TCA 1997. However, Revenue have qualified their comments on book-keeping by saying that book-keeping, when it is supplied on its own, is not a professional service. The Respondent argues that this qualification about book-keeping was not originated by Revenue but rather by ICAI, the regulators of accountants.
73. The Respondent referenced the guidance on professional practice for their members (see Appendix 3). The guidance poses the question "*What are accountancy services?*".

It states:

*Accountancy services include:*

- a. *the preparation of financial records, returns, statements or information (including management accounts)*
- b. *the provision of consultancy advice concerning accounting, auditing, insolvency or taxation matters*
- c. *the provision of a service in one of the reserved areas i.e. audit, investment business insolvency (even if CARB is not the body which authorities, registers or licenses the member to act in that reserved area)*
- d. *the representation of a client to or before third parties in matters concerning accounting, auditing, insolvency or taxation*



e. *audit services*

*Members frequently provide related services such as book-keeping and payroll services, company secretarial support services and consultancy where the principal consultancy activity is not accountancy related.*

*A member will not be deemed to be engaged in public practice when carrying out related services alone, unless those services are promoted in such a way as to create the impression of a connection with the supply of a core service or in circumstances referred to in 6 below. A member will be deemed to be in public practice if he or she held out in such a way as to create an impression to the public that the quality of the services provided will be enhanced by virtue of the provider being a Chartered Accountant. Use of designatory letters after a member's name will not generally constitute holding out...*

*Whether provision of a related service amounts to the provision of accountancy service will often depend on how the activity is carried out by the member. For example, with regard to book-keeping and the preparation of VAT, PAYE returns provided this is a data entry exercise activity only and provided the member does not purport to advise or hold himself out or herself out as having professional indemnity insurance this activity will not in itself amount to an accountancy service".*

74. According to the Respondent, the sentiment in Tax briefing 48 dealing with professional service company surcharge is derived from the above statements made by ICAI. Tax Briefing 48 states:

*"It is also considered that whereas accountancy comes within the meaning of profession, bookkeeping, payroll and VAT compliance activities would not in themselves constitute a professional activity".*

75. The Respondent is arguing that the Company in this appeal is not just involved in the provision of book-keeping services but instead are offering a complete package of services; that this is a professional company, run by professionals, offering an overall professional package and that book-keeping happens to be a necessary part of the



production of accounts. It cannot be separated out as a separate part where the product being supplied (as whole) is accounts production. Necessarily, some element of bookkeeping is a constituent part of accounts production. (it should be noted however, that the Respondent does within this appeal accept that where bookkeeping services were contracted for separately by the Appellant as a discreet service, provided for and billed separately, that that is not a professional service).

76. The Respondent makes further reference to the ICAI guidance as follows:

*"However the preparation of VAT, PAYE Returns does not amount to provision of accountancy services. The production of accounts regardless of how these are generated is an accountancy service. If and in any doubt members should contact CARB without delay for clarification."*

77. At the hearing the Respondent stated that it agreed fully with the Appellant's interpretation of Taxation Statutes.

78. The Respondent rejects the Appellant's assertion that it, the Respondent, has based its interpretation of section 441 TCA 1997 on certain guidance notes issued by the Revenue Commissioners and published in the form of Tax Briefing 48 (June 2002, page 19). The Respondent argues that it is well established that any publication by the Revenue Commissioners is not a proper aid to statutory interpretation and rather the legislation is to be interpreted in accordance with the generally accepted principles of statutory interpretation of tax statutes (including *Inspector of Taxes v. Kiernan* 1981] IR 117, *Commissioners of Inland Revenue v Maxse* 12 TC 41 (in the context of defining "profession"), *McGrath v McDermott* [1988] IR 258, *Menolly v The Appeal Commissioners* [2010] IEHC 49, *O'Flynn v Revenue Commissioners* [2013] 3 IR 533, *Gaffney v. Revenue Commissioners* [2013] IEHC 651).

79. For the purposes of applying the "principal part" test, the Respondent disputes the Appellant's assertion that it provided services other than professional services when combining bookkeeping with the preparation of financial accounts.

80. With regard to the one-off assignment in 2012 for advice on the redemption of shares held by REDACTED in D CLIENTS, the Respondent observed that the Appellant's view is



that the once-off nature of this assignment and its essential entrepreneurial characteristic has the effect of taking it outside the realm of professional service. Further the Appellant argued that the work involved in this assignment is more closely comparable to stockbroking services which have been found by the courts not to be professional services.

81. The Respondent's view is that the work carried out on this assignment draws on the Appellant's skills as accountants. The documentation supplied by the Appellant i.e. the sample engagement letter and invoices clearly indicate that the services are professional services and that the work done is to be regulated by the Institute of Chartered Accountants in Ireland (ICAI).



## ANALYSIS

### The legislation governing the surcharge

82. Section 441 TCA 1997 provides for a surcharge on certain undistributed income of service companies. The section defines a service company as including close companies where the principal part of the company's income is derived from:

- The carrying on directly of a profession
- The provision of professional services  
or
- a company which has or exercises an office or employment.

Also included are:

- The provision of services or facilities to such companies, or
- The provision of services or facilities to an individual or partnership carrying on a profession.

### Meaning of "Principal Part"

83. Section 441 TCA 1997 also defines what is not treated as a service company as follows:

*"...where the principal part of the company's income is not derived from:*

- *The carrying on directly of a profession*
- *The provision of professional services...*

*it will not be a service company for the purposes of the section."*

84. This begs the question as to the meaning of "principal part". The American Heritage Dictionary of the English Language 1295 (4<sup>th</sup> ed 2000) defines the word "principal" in its first definition as "*first, highest or foremost in importance, rank worth or degree, chief*". Collins Dictionary defines "principal" as "*first in order of importance, rank, value*" with synonyms, "main, leading, chief, prime, highest, foremost, most important".



85. The parties in this appeal appear to agree that the phrase “principal part” equates with >50% of fee income. While it is a moot point whether this would always be the test to determine the “*principal part of the company’s income*” for the proper operation of section 441 TCA 1997, I think their approach is not unreasonable within the current appeal and I will accept that interpretation for the purposes of my determination.

### **Meaning of “Profession”**

86. “Profession” or “professional services” are not defined in the Taxes Acts. In the tax case *Mac Giolla Mhaith (Inspector of Taxes) v Cronin & Associates Ltd (HC 1984)*, McWilliam J said (in relation to the meaning of “profession” in section 162CTA (now section 441 TCA 1997))

*“the statutes themselves give no assistance. Nor are the cases (including Commissioners of Inland Revenue v Maxse 12 T.C.41) which I have been referred very helpful on the issue and none of them deal with the word “vocation”. Indeed, most of them are concerned with the specific distinction between professions and trades or businesses rather than a consideration of a profession in any general context.”*

87. The Revenue published guidance on the operation of section 441 TCA 1997 and the meaning of profession. Tax Briefing -Issue 48-June 2002 (see Appendix 2) states:

*“(The meaning of ‘profession’) it must be given its ordinary meaning in accordance with the general principles of statutory construction. In the tax case of CIR V Maxse, 12 TC 41, it is stated that profession involves an occupation requiring either intellectual skill, as in painting, sculpture or surgery or skill controlled by the intellectual ability of the operator. It distinguishes this from an operation, which is substantially the production or sale of commodities.”*

*While certain activities clearly fall within this definition and are accepted as being the exercise of a profession, such as medicine or law, there may be questions about the status of others. Each case should be examined with regard to its own particular facts and the question of degree is important.*



*However, the following are regarded as being professions and as falling within the provisions of Section 441:*

*Accountant*

*...*

*Management Consultant*

*...*

***Accountancy***

*It is also considered that whereas accountancy comes within the meaning of profession, bookkeeping, payroll and VAT compliance activities would not in themselves constitute a professional activity. Any business involving tax planning, be it investing or structuring, would come within the general heading of accountancy. It is considered that this encompasses financial services..."*

88. The Respondent asserted that where services which might be regarded as bookkeeping are supplied as a necessary constituent in the provision of accountancy services then they are to be regarded as professional services. For example, in preparing a set of accounts for a client it may be necessary to perform some work which the Appellant argues is book-keeping work to bring the accounting records to trial balance stage. In these circumstances, the Respondent argues this is this is a necessary part of the work involved in accounts production and therefore is regarded as professional work. This position is consistent with Tax Briefing 48 as the key qualification used in the guidance is "not in themselves".
89. This approach by the Respondent to bookkeeping services mirrors the position taken by the Professional Accountancy bodies, The Institute of Chartered Accountants in Ireland (ICAI). In this regard, see the guidance notes set out in Appendix 3.
90. The Respondent set out and relies on the regulatory framework used by the ICAI in regulating entities, such as the Appellant, to support its argument in the following terms:

*"The Appellant is regulated by the ICAI. The ICAI provides the following guidance for its members. In the context of the requirement for a practicing*



*certificates in public practice, it defines accountancy services as including inter alia:*

- a. "the preparation of financial records, returns, statements of information (including management accounts).*
- b. the provision of consultancy advice concerning accounting, auditing, insolvency or taxation matters.*
- c. the provision of a service in one of the reserved areas i.e. audit, investment business or insolvency.*
- d. the representation of a client to or before third parties in matters concerning accounting, auditing, insolvency or taxation.*
- e. audit services."*

It also deals with certain services such as bookkeeping in the following terms:

*"A member will not be deemed to be engaged in public practice when carrying out related services [the definition of which includes bookkeeping] alone, unless those services are promoted in such a way as to create the impression of a connection with the supply of a core service or in circumstances referred to in 6 below. A member will be deemed to be in public practice if he or she is held out in such a way as to create an impression to the public that the quality of the services provided will be enhanced by virtue of the provider being a Chartered Accountant."*

*The guidance then continues:*

*"Whether provision of a related service [the definition of which includes bookkeeping] amounts to provision of an 'accountancy service' will often depend on how the activity is carried out by the member. For example, with regard to bookkeeping and the preparation of VAT/PAYE returns, provided this is a data entry exercise activity only and provided the member does not purport to advise or hold himself or herself out as having professional indemnity insurance, this*



*activity will not in itself amount to an accountancy service. In most cases, however the preparation of VAT/PAYE returns does amount to the provision of accountancy services. The production of accounts, regardless of how these are generated, is an accountancy service.”*

91. It seems to me that great weight should be placed on the guidance of a professional accountancy services regulating body, such as ICAI, in determining what constitutes the work of an accountant(s) or the provision of accountancy services.
92. This approach has been followed to a degree by the parties to this appeal. This has happened by the acceptance of both parties that where the Appellant has specifically contracted with its clients through its engagement letters or otherwise, to provide only book-keeping and payroll services, then the revenues from such services are treated as non-professional and not accountancy services and therefore outside of section 441 TCA 1997.

### **Classification of Income**

93. Appendix 4 sets out which activities of the Company that the Appellant believes should be classed as either professional or non-professional.

### **Basis of Apportionment**

94. Each person in the office accounts for their time on a quarter hour basis and the Company produces a time report on each job/ client. Where the Company, within its income analysis, has apportioned fee income between different categories/ classifications of fee income, it has done so based on recorded chargeable time. This may differ from actual recovered or billable chargeable time. It may also differ from the net profit margin achieved by the Appellant for different activities within this business. The Respondent has accepted this approach adopted by the Appellant.

It is a moot point whether this is the only appropriate basis for determining taxable income from diverse activities under section 441 TCA 1997.



## Analysis of Income in 2012 and 2013

95. The Appellant accepts that it is a close company; that it is an accountancy practice which is regulated by the Institute of Chartered Accountants in Ireland (“ICAI”) (“the Institute”) and that it provides professional services. The Appellant accepts that certain of its income in the relevant periods 2012 and 2013 is income from carrying on a profession and/or providing professional services for example accountancy, consultancy and taxation services. Notwithstanding, the Appellant asserts that the principal part of its income is not derived from carrying on a profession or providing professional services such that it falls within the deeming provision in section 441(2) and as a consequence, it “shall be deemed not to be a service company” for the purposes of the surcharge for the periods 2012 and or 2013.

### 2012

96. Appendix 6 sets out an analysis of the income of the Appellant (submitted in evidence) for the accounting period ended 30 April 2012. The Appellant asserted that the principal part of its income in this period is not income from carrying on a profession and/or providing professional services; rather it is derived from other services including bookkeeping, PAYE and VAT compliance services to its clients together with fees for advice to a number of clients on a proposed redemption of shares by REDACTED in those client companies.
97. During the accounting period ended 30<sup>th</sup> April 2012 the Appellant, in evidence, stated it derived some income from professional services i.e. accountancy, consultancy and taxation services which amounted to approximately 12% of fee income. The remainder of the fee income for accounting period to 30<sup>th</sup> April 2012 was split into non-professional services, 44% was for bookkeeping and related services and 44% was for exploitation of an exceptional opportunity.

#### *Special work (exceptional opportunity) in 2012.*

98. The Company undertook a special assignment for REDACTED in 2012. Details are outlined under “Evidence” above. Fees generated were €294,348, inclusive of a €50,000 discretionary fee paid by REDACTED to the Company “for the amount of work we put in”.



99. In cross examination of Mr P, he was asked by the Respondent in the following terms:

Q. *“would you classify that..as book-keeping or would you classify it as a consultancy fee?”*

A. *“well its definitely not book-keeping.*

A. *I would have to say that it was—I find it difficult to get another term for it other than consultancy”*

Q. *“...its consultancy because you’re bringing something to the table here. You are actually bringing.... your expertise in relation to the valuation of the redemption of those shares?”*

A. *“No I would say that they asked us to present this to the **D CLIENTS** because we were best placed. We were the auditors.”*

## 2013

100. In respect of the year ended 30<sup>th</sup> April 2013 (see Appendix 8) the Appellant asserted that the principal part of its income was not income from carrying on a profession and/or providing professional services but rather was derived from other services including the provision of bookkeeping services, PAYE and VAT compliance to its clients.

101. According to the Appellant the accounting period ending 30<sup>th</sup> April 2013 was broken down into approximately 57% of non-professional services i.e. bookkeeping and related services while professional services i.e. audit, accountancy and taxation services, amounted to 43% of fee income. Based on this interpretation of the Appellant, it did not come within the professional service surcharge as set out in section 441 TCA 1997.

102. The Appellant also stated that in certain instances, simply because a fee note was entitled “professional fee” did not, of itself, mean that the service provided was professional for the purposes of section 441. The Appellant maintained that the determination as to whether the service provided was professional in nature, should be based on the facts. In Ireland, nobody is required to be authorised or licensed or regulated to provide bookkeeping, payroll or V.A.T. compliance activities, unlike a profession e.g. barrister, solicitor, doctor, nurse, or pharmacist. Bookkeeping services can be provided by anybody and, particularly with the advent of specialist computer packages handling bookkeeping, payroll and tax compliance activities, it cannot be the



case that such activities constitute an occupation requiring intellectual skill controlled by intellectual ability, over and above the natural skill and intellectual ability involved in any personal commercial activity e.g. fixing a car or mending a washing machine - activities which have never been considered a profession. The Appellant submits that the work involved in bringing a client's records to trial balance stage as part of the accounts production process is outside the scope of professional services intended by section 441 TCA 1997.

### *Statutory Interpretation*

103. There is a clear dispute between the parties as to the meaning of "professional services" within section 441 TCA 1997
104. The Appellant argued that there is no specific definition of the word "profession" or "professional services" in the Taxes Consolidated Acts. He argued that McWilliam J. in *Mac Giolla Mhaith (Inspector of Taxes) v Cronin & Associates Ltd* highlighted the difficulty in ascribing a meaning to the word "profession" within section 162 Corporation Tax Act 1976 (the equivalent of section 441, TCA 1997), he stated -

*"Nor do I agree with the argument made on behalf of the Inspector that the use of the terms "profession" and "professional" in the Memorandum of Association of the Institute is very significant. It is not in any way conclusive and I take the view that its significance on this issue is minimal. It may be relevant to consider what the Institute thought of the status of its members but no person can become something that he is not merely by saying so. It is purely a question of fact for the Court to decide what is the status or standing of any person however he may choose to describe himself. In Carr v. CLR., Du Parq, L. J.,() at page 166, adopting a view expressed by Scrutton, L.J., in C.I.R. v. Maxse,() stated*

*"it seems to me to be very dangerous to try to define the word 'profession' and, on the same page, he said "Ultimately one has to answer this question; would the ordinary man, the ordinary reasonable man - the man, if you like to refer to an old friend on the Clapham omnibus - say now, in the time in which we live, of any particular occupation, that it is properly described as a profession?"*



*It seems to me that this approach should also be adopted to the word "vocation". Not having any evidence from the occupants of the Clapham omnibus, I have turned, as I think I am entitled to turn, to some modern dictionaries.*

*The Shorter Oxford Dictionary Ed. 3 Revised 1980, describes profession as:- The occupation which one professes to be skilled in and to follow; a. A vocation in which a professed knowledge of some department of learning is used in its application to; the affairs of others, or in the practice of an art founded upon it. Applied specially to the three learned professions of divinity, law and medicine; also to the military profession. b. In a wider sense; any calling or occupation by which a person habitually earns his living. Vocation is described as one's ordinary occupation, business or profession.*

*In Chambers Twentieth Century Dictionary (1979), profession is described as an employment not mechanical and requiring some degree of learning; calling, habitual employment. Vocation is described as one's occupation, business or profession. In Collins New English Dictionary (1956), profession is described as occupation or calling, especially one requiring learning. Vocation is described as calling, profession or occupation. Having read these meanings, I am left in the position that the statute has provided a conundrum which I cannot solve. If the ions, it seems unnecessary to have used the word "profession" at all. The word "profession" even as extended by the word "vocation" must have some limitation. Similarly, it must have been intended to effect some extension but, as I cannot guess what this extension was intended to be, I am not in a position to say that the inference drawn by the President of the Circuit Court was not correct. Accordingly, this appeal will be dismissed. "*

105. The Respondent has published a Briefing Paper (see Appendix 2) setting out its view on what constitutes "professional" services. Included within that paper is the following:

*"It is also considered that whereas accountancy comes within the meaning of profession, bookkeeping, payroll and VAT compliance activities would not in themselves constitute a professional activity."*

106. The Respondent admitted at the hearing that its view, that bookkeeping and payroll services constitute professional services when provided in connection with other professional services such as accountancy services, was based on the ICAI guidance to its members, which is set out in Appendix 3. It states:



*“Members frequently provide related services such as book-keeping and payroll services, company secretarial support services and consultancy where the principal consultancy activity is not accountancy related.*

*A member will not be deemed to be engaged in public practice when carrying out related services alone, unless those services are promoted in such a way as to create the impression of a connection with the supply of a core service or in circumstances referred to in 6 below. A member will be deemed to be in public practice if he or she held out in such a way as to create an impression to the public that the quality of the services provided will be enhanced by virtue of the provider being a Chartered Accountant. Use of designatory letters after a member’s name will not generally constitute holding out.*

### **3. What are related services?**

*The following is a non-exhaustive list of typical activities which may be construed as related services:*

- a. bookkeeping*
- b. company secretarial support services*
- c. acting as an unpaid trustee in a personal capacity*
- d. training services to firms or students*
- e. business funding advice where this only involves seeking the source of funds*
- f. management consulting on non-accounting matters*
- g. computer installation and training.*

*Whether provision of a related service amounts to provision of an ‘accountancy service’ will often depend on how the activity is carried out by the member. For example, with regard to bookkeeping and the preparation of VAT/PAYE returns, provided this is a data entry exercise activity only and provided the member does not purport to advise or hold himself or herself out as having professional indemnity insurance, this activity will not in itself amount to an accountancy service. In most cases however the preparation of VAT/PAYE returns does amount to the provision of accountancy services. The production of accounts, regardless of how these are generated, is an accountancy service.*



107. The Appellant argued that case law illustrated that this approach by the Respondent amounted to an unwarranted extension of the definition of ‘profession’ or ‘professional services’ and this breached the rules on the interpretation of taxation statutes. The Appellant quoted extensively from case law to make this point, as I have noted earlier.
108. In the recent Supreme court case of *Dunnes Stores v The Revenue Commissioners* (SCR No.2012/66, 2019), Judge McKechnie gave a seminal ruling on the interpretation of taxation statutes. This case centred on tax assessment raised against Dunnes Stores in relation to the operation of the plastic bag levy and how it should operate, in its supermarkets. Dunnes Stores lost the appeal.
109. In his judgement, McKechnie J. para 64, spoke about the difficulty of following the thread of the many taxes cases in the past dealing with the interpretation of taxing statutes:

*“Where however the meaning is not clear, but rather imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as to their existence, their scope and their application, it can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case one particular rule rather than another has been applied, and why in a similar case the opposite has also occurred. Aside from this however, the aim, even when invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.”*

110. The Appellant cited *Inspector of Taxes v Kiernan* (1981) I.R.117. McKechnie J. also cited this case when giving judgement in the Dunnes Stores Case. He stated at para 69:

*“Aside from the provisions of s.5 of the 2005 Act, but in a closely related context, there is the case, cited by both parties of Inspector of Taxes v Kiernan (1981) I.R.117. It is a case of general importance, where the Court was called upon to determine whether the word “cattle” in s.78 of the Income tax Act 1967, could be read as including “pigs”. Henchy J. in his judgement made three point of note. The first of these he stated as follows:*



*(i) "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 particularly statutory pattern as a whole, and to the extent that will effectuate the particular legislation or a particular definition thereof."*

*The learned judge went on to discuss when and in what circumstances a word should be given a special meaning, in particular a word or phrase which was directed at a particular trade, industry or business. At pp.121 and 122 he had this to say:-*

*(ii) If the Act is one passed with reference to a particular trade, business or transaction, and the 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 other interpretative rule which Henchy J. also referred to is the presumption against double penalisation or put in a positive way, there is an obligation to strictly construe words in a penal code or taxation statute. In this context he said:-*

*(iii) "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...as used in the statutory provision in question here, the word "cattle" calls for such a strict interpretation."*

*The point first made is of common application: a provision should be construed in context having regard to the purpose and scheme of the Act as a whole, and in a manner which gives effect to what is intended. The second point does not appear relevant...The third is designed to prevent the fresh imposition of a*



*liability where such a burden could only be achieved by an interpretation not reasonably open, by the standard principles of construction above mentioned.”*

111. It seems to me that the clear intention of the Oireachtas in enacting section 441 TCA 1997, that they wished companies carrying out professional services or the services of a profession should be required to distribute a specified amount of profits listed within a specified period of time. As McKechnie J. puts it at para 62:

*“...that being so, the various imposing provisions must be looked at critically. If however, having carried out this exercise, and notwithstanding the difficulty of interpretation involved, those provisions, when construed and interpreted appropriately, are still capable of giving rise to the liability sought, then such should be so declared.”*

112. Henchy J. in *Inspector of Taxes v Kiernan (1981) I.R.117* was quoted above discussing when and in what circumstances a word should be given a special meaning, in particular a word or phrase which was directed at a particular trade, industry or business. The accountancy profession is a particular industry or business. The ICAI guidance on what activities fall within the ambit of its professional certification process would be known to all practitioners in that industry. It is my view that that profession would recognise that all aspects of the preparation of statutory financial statements would fall within the meaning of a regulated professional activity of “accountancy” as guided by the ICAI.

113. To conclude on this point, I reject the assertion made by the Appellant that the Respondent’s interpretation of what constitutes professional services for the purposes of this appeal amounts to a breach of the law on the interpretation of a tax statute. Instead, I would be of the view that the Respondent is putting forward its interpretation of what constitutes professional services; that they are interpreting the legislation and its applicability to the Appellant.

114. It should be noted that the Respondent did not dispute the Appellant’s understanding of the rules of interpreting taxation statutes and in doing so believed that their approach applied those rules correctly.



## Findings

115. The Appellant believes that there is a clear principle in the Maxse case, the principle being that you can break down the constituent elements of the diverse activities in a company to derive a view as to the nature of those activities. To an extent I agree with the Appellant on this point. However, the extent to which you may separate out constituent activities from the whole activity depends on the nature of those activities and their composition within the whole. In that sense, there are limits to which you may apply the Maxse principle, especially where the constituent is a necessary part of the whole.
116. The key income constituent, within the 2013 income of the Company, upon which the Company relies for its classification of non-professional income is the time (chargeable hours) of junior staff who assist with bringing the financial accounts of clients to what the Appellant calls “trial balance stage”. This amounted to €376,421. These individuals are trainee accountants working under the supervision of the directors and other qualified accountants and experienced staff. Their activities are described in the evidence section above, under the heading “Financial Accounts & Audit”. This work included preparing the statutory financial accounts; in some cases, preparing / assisting with the preparation of an audit file for the audit of those financial accounts. The Appellant agrees that the time (chargeable hours) of its professionally qualified staff in the activities associated with the preparation and audit of financial accounts is a professional service. I believe that the preliminary and intermediate steps in those activities, undertaken by junior trainee accountancy staff should also be classified as professional. I believe this for the following reasons:
- The work of the junior staff is critical to the completion of the Financial Accounts and their audit;
  - The junior staff work is an integral part of the preparation of financial accounts/ audit;
  - The preparation of Financial Statements is regarded as a regulated activity by the ICAI

*“ The production of accounts, regardless of how these are generated, is an accountancy service.”*



- This activity can be distinguished from book-keeping associated with the **SOFTWARE A** system which is largely a mechanical/ computerised process, which does not necessarily lead to the production of financial statements.
- The preparation of financial statements (with or without an audit) is in general governed by the Companies Acts. It would be generally understood that qualified accountants produce such financial statements and that such activity is a professional services activity.

This is where I believe there is a limit on the application of the Maxse principle to the Appellant Company's activities. I do not believe that Maxse case supports an attempt to syphon off some of the rudimentary or preliminary elements of an intrinsically professional activity and class those elements as non-professional, just because those elements when examined in isolation could be construed as having non-professional work attributes.

117. In evidence, the witness for the Appellant spoke about junior staff inputting Trial Balances of clients from the **SOFTWARE C** software programme up to the **SOFTWARE D** software programme as part of the process to produce the client financial statements. He also spoke of the work of junior staff, which he classed as non-professional, in these terms: *"we have extracted from the overall figure which is junior work attached to bringing the accounts from management accounts to final accounts (statutory financial statements) position."* Elsewhere, the witness spoke of classifying the work of junior staff bringing the financial accounts to trial balance stage, as non-professional services work. It seems to me, based on the evidence, that a considerable amount of work is done by junior staff associated with the data transferred from **SOFTWARE C** to the **SOFTWARE D** programme and the completion of the statutory financial statements for clients. It is the classification of this junior work as non-professional by the Appellant that is problematic.
118. In relation to 2012, the witness for the Appellant indicated that the special assignment they had been awarded by **REDACTED** was given to the Company as they were best placed as auditors of the **D CLIENTS** to explain the complexities of the accelerated share buy-back scheme. Because the assignment was won on foot of their status as auditors and also because of its financial complexity, I have no doubt that all that this fee income,



including the unsolicited fee of €50,000 for a “job well done” should be classed as professional services income.

119. In evidence Mr. P indicated that in 2012 the fees from **S CLIENTS** under the heading “Fees (incl. all services)” was up to 75% bookkeeping with 25% bringing financial accounts up to Trial Balance stage. I have classified that 25% element of bringing financial accounts up to Trial Balance stage as professional services in my analysis in Appendix 7. I have taken a similar approach when analysing 2013 fee income in Appendix 9.



### **Material findings of fact**

120. I find as a material fact that the Appellant Company carries on both professional and non-professional activities.
121. I find as a material fact that both the Appellant and the Respondent agreed to use the classification of the Company's fee income, apportioned by chargeable hours (based on time sheets), as the basis for allocating taxable income between professional and non-professional activities.
122. I find as a material fact that that the fees generated from the bookkeeping activities involving the inputting of client data into the **SOFTWARE A** computer system does not amount to a professional services activity.
123. I find as a material fact that the fees generated by the payroll activities associated with client data being input into the **SOFTWARE B** computer system does not amount to a professional services activity.
124. I find as a material fact that the fee income derived from the chargeable hours of junior staff assisting in the preparation of client financial statements is related to a professional services activity.
125. I find as a material fact that the fee income derived from the chargeable hours of junior staff assisting in the preparation of audit files and support of the client audit process is related to a professional services activity.
126. I find as a material fact that the fees generated by the Special Assignment in 2012 was in the nature of a professional service.



## Conclusion

127. I have concluded that the income analysis for 2012, provided by the Appellant (see Appendix 6) requires to be restated in accordance with my findings of material fact above. I have set out a restated analysis in Appendix 7. Using this analysis, I conclude that 59% or the greater part of the Company's fee income in 2012 derived from professional services.
128. I have concluded that the income analysis for 2013, provided by the Appellant (see Appendix 8) requires to be restated in accordance with my findings of material fact above. I have set out a restated analysis in Appendix 9. Using this analysis, I conclude that 68% or the greater part of the Company's fee income in 2013 derived from professional services.

## The burden of proof

129. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that he/she/it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

*'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.'*

The Appellant has not succeeded in this appeal in meeting the burden of proof test.



## **Determination**

130. Having considered the evidence and facts, the relevant legislation and related case law,

- I determine that the Appellant did not succeed in discharging the burden of proof in this appeal.
- I determine that the amended assessment dated 27 April 2018 for year ended 30 April 2012 totalling additional tax payable of €31,316, shall stand.
- I determine that the amended assessment dated 27 April 2018 for year ended 30 April 2013, totalling additional tax payable of €65,937, shall stand.

131. This appeal is hereby determined in accordance with section 949AK TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**16<sup>th</sup> day of APRIL 2020**



## Appendix 1

### APPELLANT

#### BOOK 1

#### TABLE OF CONTENTS

A 1	Summary of Fees – Year ended 30 <sup>th</sup> April 2012
B 1	Summary of Fees – Year ended 30 <sup>th</sup> April 2013
B 2	Index of Fee Analysis
B 3-23	Review of Sales Invoice – Year ended 30 <sup>th</sup> April 2013
C 1-6	Letter of Engagement – <b>D CLIENT</b>
C 7-8	Year end Fee Invoice Y / E 30/04/11 – <b>D CLIENT</b>
C 9-10	Year end Fee Invoice Y / E 30/04/12 – <b>D CLIENT</b>
C 11-19	Recurring invoices issued during year 30/04/2013
C 20	Other Invoice issued during year 30/04/13
C 21	Summary of Time during year
C 22-53	Time records for year and fees.
D 1-4	Letter of Engagement – <b>S CLIENT</b>
D 5-6	Year end Fee Invoice – <b>S CLIENT</b>
D 7	Summary of Time during year
D 8-16	Time records for year end fee.
E 1-4	Letter of Engagement – One off Assignment
E 5	Fee Invoice
F 1	Letter of request re Freedom of Information
F 2	Email re request
F 3	email response re clarification
F4 – 22	Response from Revenue to Freedom of Information





## Booklet of Evidence Documents

### *Index*

A	
A1	Notice of Amended Assessment p/e 30/04/'12
B	
B1	Notice of Amended Assessment p/e 30/04/'13
C	
C1	I.C.A.I. Letter of Authorisation
D	
D1	Letter from Revenue dated 26/04/17
E	
E1	E-mail from Revenue 01/06/'18
E2	Analysis of Fees p/e 30/04/'13
F	
F1	E-mail from Revenue dated 20/04/'18
F2	Analysis of Fees p/e 30/04/'13
F3	Analysis of Fees p/e 30/04/'13?
G	
G1	E-mail from Revenue dated 20/02/'18
G2	Analysis of fees p/e 30/04/'13
H	
H1	Letter to Revenue dated 21/11/'17
H2	Analysis of fees p/e 30/04/'13
I	
I1	Letter from Revenue dated 22/08/'17
I2	Analysis of fees p/e 30/04/'13
J	
J1	Letter from Revenue 09/05/'17
K	
K1	Letter to Revenue dated 10/01/'17
K2	Analysis of fees p/e 30/04/'13
L	
L1	Letter to Revenue dated 09/12/'16



L2	Analysis of fees p/e 30/04/'13
M	
M1	Letter from Revenue dated 21/09/'16
M2	Analysis of fees p/e 30/04/'13
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N1	Letter from Revenue dated 30/06/'16
O	
O1	Letter from Revenue dated 19/05/'16
P	
P1	Letter to Revenue dated 29/09/'15
Q	
Q1	Letter from Revenue dated 22/09/'15
R	
R1	Letter to Revenue dated 10/08/'15
S	
S1	Letter from Revenue dated 09/07/'15
T	
T1	Letter to Revenue dated 02/04/'15
U	
U1	Memo re phone call with Revenue on 27/03/'15
V	
V1	Letter from Revenue dated 08/03/'15
W	
W1	Letter from Revenue dated 08/03/'15
X	
X1	Letter from Revenue dated 27/02/'15



## Appendix 2

### Extract from TAX BRIEFING ISSUE 48 June 2002

#### Professional Service Company Surcharge

*Section 441 TCA 1997* provides for a surcharge on certain undistributed income of service companies. The section defines a service company as including close companies where the principal part of the company's income is derived from:

- The carrying on directly of a profession
- The provision of professional services  
or
- a company which has or exercises an office or employment.

Also included are:

- The provision of services or facilities to such companies, or
- The provision of services or facilities to an individual or partnership carrying on a profession.

However, not included in the latter are genuine cases where the services or facilities are provided for persons not connected with the company.

As the tax acts do not define "profession" it must be given its ordinary meaning in accordance with the general principles of statutory construction. In the tax case of *CIR V Maxse*, 12 TC 41, it is stated that profession involves an occupation requiring either intellectual skill, as in painting, sculpture or surgery or skill controlled by the intellectual ability of the operator. It distinguishes this from an operation, which is substantially the production or sale of commodities.

While certain activities clearly fall within this definition and are accepted as being the exercise of a profession, such as medicine or law, there may be questions about the status of others. Each case should be examined with regard to its own particular facts and the question of degree is important.



However, the following are regarded as being professions and as falling *within the provisions of Section 441*:

Accountant  
Actor  
Actuary  
Archaeologist  
Architect  
Auctioneer/Estate Agent  
Barrister  
Computer programmer  
Dentist  
Doctor  
Engineer  
Journalist  
Management Consultant  
Optician  
Private School  
Quantity Surveyor  
Solicitor  
Veterinary surgeon.

While the above are considered to be providing professional services, the list is not intended to be an exhaustive list of all possible professions.

The following activities are generally not considered to constitute the carrying on, of a profession:

Advertising Agents  
Auctioneers of livestock in a cattle mart  
Insurance brokers  
The operation of a retail pharmacy  
Public relations companies  
Stockbrokers.

### **Accountancy**





It is also considered that whereas accountancy comes within the meaning of profession, bookkeeping, payroll and VAT compliance activities would not in themselves constitute a professional activity. Any business involving tax planning, be it investing or structuring, would come within the general heading of accountancy. It is considered that this encompasses financial services.

### **Insurance Brokers**

It should be noted that while it is accepted that the Case 1 income of insurance broking companies is not within the scope of *Section 441*, deposit interest on deposits held by such companies are not regarded as arising in the course of the company's trade unless the company can satisfy the very high burden of proof that the deposits are integral to its trade. (See Revenue Information Notice "Deposit interest - Whether a trading receipt"). As such, therefore deposit interest is assessable Case III and is within the scope of the *Section 440* surcharge on undistributed investment income.



## Appendix 3

### Guidance (from the Institute of Chartered Accountants in Ireland (ICAI)) on definition of public practice and practicing certificates

#### PART C: SCHEDULES

#### 1. What is public practice?

Public Practice is providing or holding out to provide, personally and directly, to persons other than a member's employer any of the following:

- a. accountancy services
- b. services of an insolvency practitioner
- c. services as a responsible individual employee (in accordance with the Audit Regulations)

A member engages in public practice when, personally and directly he or she provides or holds himself or herself out to provide, either personally or through an entity in which he or she is a principal, such services to the public for remuneration.

#### 2. What are accountancy services?

Accountancy services include:

- a. the preparation of financial records, returns, statements or information (including management accounts)
- b. the provision of consultancy advice concerning accounting, auditing, insolvency or taxation matters
- c. the provision of a service in one of the reserved areas i.e. audit, investment business insolvency (even if CARB is not the body which authorities, registers or licenses the member to act in that reserved area)
- d. the representation of a client to or before third parties in matters concerning accounting, auditing, insolvency or taxation
- e. audit services

Members frequently provide related services such as book-keeping and payroll services, company secretarial support services and consultancy where the principal consultancy activity is not accountancy related.

A member will not be deemed to be engaged in public practice when carrying out related services alone, unless those services are promoted in such a way as to create



the impression of a connection with the supply of a core service or in circumstances referred to in 6 below. A member will be deemed to be in public practice if he or she held out in such a way as to create an impression to the public that the quality of the services provided will be enhanced by virtue of the provider being a Chartered Accountant. Use of designatory letters after a member's name will not generally constitute holding out.

### **3. What are related services?**

The following is a non-exhaustive list of typical activities which may be construed as related services:

- h. bookkeeping
- i. company secretarial support services
- j. acting as an unpaid trustee in a personal capacity
- k. training services to firms or students
- l. business funding advice where this only involves seeking the source of funds
- m. management consulting on non-accounting matters
- n. computer installation and training.

Whether provision of a related service amounts to provision of an 'accountancy service' will often depend on how the activity is carried out by the member. For example, with regard to bookkeeping and the preparation of VAT/PAYE returns, provided this is a data entry exercise activity only and provided the member does not purport to advise or hold himself or herself out as having professional indemnity insurance, this activity will not in itself amount to an accountancy service. In most cases however the preparation of VAT/PAYE returns does amount to the provision of accountancy services. The production of accounts, regardless of how these are generated, is an accountancy service.

If in any doubt members should contact CARB without delay for clarification.

### **4. Are there any other circumstances where a member will be deemed to be engaged in public practice?**



A member will be deemed to be in public practice if he or she holds himself or herself out in such a way as to create the impression to the public that the quality of the services provided will be enhanced by virtue of the provider being a Chartered Accountant. Use of designatory letters after a member's name will not generally constitute holding out.

**5. Circumstances where a member will not be considered to be engaging in public practice.**

It is important to remember that each situation must be considered on its own facts and if a member is unsure, he or she should contact CARB, outline the circumstances and be advised accordingly. For example, a member providing consultancy services to his or her former employer for a limited time may not be required to hold a practicing certificate however a member providing consultancy services to a range of clients would.

Regulation 5.6 lists situations where a member will not be considered to be engaging in public practice and so will not be required to hold a practicing certificate.

It may be appropriate in such circumstances for a member to inform clients that, since he or she is not engaged in public practice and does not hold a practicing certificate, no professional indemnity insurance is in place.

**6. Who decides if a member is engaged in public practice?**

It is each member's own personal responsibility to determine whether his or her activities amount to engaging in public practice and whether he or she ought to hold a practicing certificate. If a member remains in doubt as to whether his or her activities amount to engaging in public practice an enquiry giving all relevant facts should be made to CARB. In determining whether a member is in fact engaging in public practice the decision of the Quality Assurance Committee will be final.

**7. Who needs a practicing certificate?**





A member who engages in public practice in Ireland and/or the UK (including the Channel Islands and the Isle of Man) must hold a current practicing certificate.

In certain circumstances members may wish to hold a practicing certificate when not specifically required to do so under the Public Practice Regulations. For example, the reserved area regulations (regulations relating to Audit, Insolvency (GB/NI) and Investment Business) require certain specified persons to hold a practicing certificate. If a member intends to provide reserved area services, he or she should refer immediately to the relevant regulations or contact CARB for advice.

#### 8. **When should I apply for a practicing certificate?**

A member must hold a current practicing certificate **before** commencing in public practice.

An application form together with details of Professional Indemnity Insurance must be submitted to CARB for approval. Whilst in many cases the application can be approved by the staff of CARB (the secretariat), there are circumstances which will require the application to be considered by the Quality Assurance Committee.

Applications should be submitted to CARB three months in advance of when the member intends to commence practicing to be certain that CARB has adequate time to process same.



## APPENDIX 4-Appellant

### APPELLANT

Appellant's analysis of fee income based on evidence of Mr. P

Activity	Professional Services	Non-Professional Services
A Basic Book-keeping		X
B Management Accounts		X
C Corporation Tax – preparation and submission of returns	X	
D Income Tax (incl. CGT)	X	
E VAT – preparation and submission of returns		X
F PAYE – preparation and submission of returns		X
G CRO – preparation and submission of returns		X
H **Audit	X	X
I Left Blank		
J Revenue Audit	X	
K Company Structure, reports	X	
L Misc, Haulage, Insurance Declaration, Storage, Wine Licence	X	
M Projection, Cashflows	X	
N Corporate Finance, Forensic, Due Diligence	X	
O *Provision of Staff		X
P **Special Assignment		X

\* In evidence Mr. P indicated that professional staff were seconded to a client to perform book-keeping services.





## APPENDIX 5-TAC

### APPELLANT

#### Tax Appeals Commission determination of how Company should analyse its fee income\*\*\*\*\*

Activity	Professional Services	Non-Professional Services
A Basic Book-keeping		X
B Management Accounts		X
C Corporation Tax – preparation and submission of returns	X	
D Income Tax (incl. CGT)	X	
E VAT – preparation and submission of returns		X
F PAYE – preparation and submission of returns		X
G CRO – preparation and submission of returns		X
H ***Financial Accounts preparation	X	
I ****Audit	X	
J Revenue Audit	X	
K Company Structure, reports	X	
L Misc, Haulage, Insurance Declaration, Storage, Wine Licence	X	
M Projection, Cashflows	X	
N Corporate Finance, Forensic, Due Diligence	X	
O *Provision of Staff		X
P ** Special Assignment	X	

\* In evidence Mr. P indicated that professional staff were seconded to a client to preform book-keeping services.

\*\* This item was not listed in documented evidence but I have added it based on oral evidence.

\*\*\*The Appellant did not separately show this item in the documentary evidence supplied. Instead the Appellant indicated that “Audit” was partly a professional and





partly a non-professional service (insofar as it related to the preparation of financial accounts). I have, therefore added a category “Financial Accounts preparation” to distinguish this activity from auditing.

\*\*\*\* In evidence, Mr. P indicated that “Audit” was partly a professional and partly a non-professional service (insofar as it related to the preparation by junior staff of the back-up documentation for the audit file).

\*\*\*\*\* The classification of activities falling within non-professional activities in this Appendix includes items agreed between the parties to this appeal and does not necessarily reflect a considered view of the Tax Appeals Commission.





**Appendix 6-Appellant**

Supplied by Appellant as documentary evidence

**Exhibit A**

**APPELLANT**

**SUMMARY OF FEES**

**YEAR ENDED 30<sup>TH</sup> APRIL 2012**

**D CLIENT FEES**

**Total**

€

Fees (incl. all services)	20,525.00
Book-Keeping Payroll Etc.	195,961.00
Taxation	33,785.00

**S CLIENT FEES**

Fees (incl. all services)	89,807.00
Book-Keeping Payroll Etc,	6,850
Taxation	1,795.00

**Other**

Special Work	294,348.00
Taxation	24,033

—————  
**667,104.00**



**Appendix 7-TAC**

**APPELLANT**  
**SUMMARY OF FEES**  
**YEAR ENDED 30<sup>TH</sup> APRIL 2012**

<b><u>D CLIENT FEES</u></b>	<b><u>Total</u></b>	<b><u>Professional</u></b>	<b><u>Non-Professional</u></b>	<b><u>Evidence</u></b>
Fees (incl. all services)	20,525	20,525		audit
Book-Keeping Payroll Etc.	195,961		195,961	Contract specific bookkeeping / payroll
Taxation	33,785	33,785		
<b><u>S CLIENT FEES</u></b>				
Fees (incl. all services)	89,807	22,452*	67,355	*25% bringing financial accounts to Trial Balance stage by junior professional staff
Book-Keeping Payroll Etc,	6,850		6,850	
Taxation	1,795		1,795	
<b><u>Other</u></b>				
Special Work*	294,348	294,348		Consultancy / Share valuation
Taxation	24,033	24,033		





<b>Total</b>	<b>667,104</b>	<b>395,143</b>	<b>271,961</b>	
	<b>100%</b>	<b>59%</b>	<b>41%</b>	





**Appendix 8-Appellant**

Summary provided by Mr.P in Witness Cross Examination

**APPELLANT**  
**SUMMARY OF FEES**  
**YEAR ENDED 30<sup>TH</sup> APRIL 2013**

<b><u>D CLIENT FEES</u></b>	<b><u>Total</u></b>	<b><u>Professional</u></b>	<b><u>Non-Professional</u></b>	<b><u>Evidence</u></b>
Fees (incl. all services)	1,008,590	632,169	376,421*	*Junior professional staff bringing financial accounts to Trial Balance stage
Book-Keeping Payroll Etc.	211,055		211,055	Contract specific bookkeeping / payroll
Taxation	7,500	7,500		
Cashflows/Projections	1,800	1,800		
Due Diligence	2,331	2,331		
<b><u>S CLIENT FEES</u></b>				
Corporate Fees	16,211	16,211		
Fees (incl. all services)	431,145	94,720	336,425*	*25% bringing financial accounts to Trial Balance stage by Junior professional staff



Book-Keeping Payroll Etc,				
Taxation	57,517	52,067	5,450	
Forensics	7,500	7,500		
<b><u>Other</u></b>				
Secondment of staff (Note1)	133,748		133,748	
<b><u>Total</u></b>	<b>1,877,397</b>	<b>814,298</b>	<b>1,063,099</b>	
	<b>100%</b>	<b>43%</b>	<b>57%</b>	

**Note 1.**

This relates to the secondment of professional staff to undertake a book-keeping assignment for a major client.





**Appendix 9-TAC**

Determination by Tax Appeals Commission

**APPELLANT**  
**SUMMARY OF FEES**  
**YEAR ENDED 30<sup>TH</sup> APRIL 2013**

<b><u>D CLIENT FEES</u></b>	<b><u>Total</u></b>	<b><u>Professional</u></b>	<b><u>Non-Professional</u></b>	<b><u>Evidence</u></b>
Fees (incl. all services)	1,008,590	1,008,590		Audit & financial accounts preparation
Book-Keeping Payroll Etc.	211,055		211,055	Contract specific bookkeeping / payroll
Taxation	7,500	7,500		
Cashflows/Projections	1,800	1,800		
Due Diligence	2,331	2,331		
<b><u>S CLIENT FEES</u></b>				
Corporate Fees	16,211	16,211		
Fees (incl. all services)	431,145	178,826	252,319*	*25% bringing accounts to Trial Balance stage by junior staff has been excluded
Book-Keeping Payroll Etc,				
Taxation	57,517	52,067	5,450	



Forensics	7,500	7,500		
<b><u>Other</u></b>				
Secondment of staff (note 1)	133,748		133,748	
<b><u>Total</u></b>	<b>1,877,397</b>	<b>1,274,825</b>	<b>602,572</b>	
	<b>100%</b>	<b>68%</b>	<b>32%</b>	

Note 1.

This relates to the secondment of professional staff to undertake a book-keeping assignment for a major client.

