



151TACD2023

Between

[REDACTED]

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is a determination given in relation to the Appellant's appeal of an amended assessment to corporation tax raised by the Revenue Commissioners ("the Respondent") on 17 December 2019 in the amount of €52,581.12.

**Background**

2. The Appellant is an unlimited company incorporated in Northern Ireland constituting a "service company" within the meaning of section 441 of the Taxes Consolidation Act 1997 ("the TCA 1997"). The essence of the Appellant's business was the provision of [REDACTED] services through its employee, director and owner, [REDACTED] ("the employee, director and owner").
3. In the amended assessment of 17 December 2019 the Respondent assessed the Appellant as having a total amount of corporation tax chargeable for 2014 of €156,075.12. This comprised corporation tax of €102,344.12 and a surcharge on the undistributed income of a service company for 2014 of €53,731, charged pursuant to the aforementioned section 441 of the TCA 1997. When account was taken of tax already paid by the Appellant

for that year, the balance of corporation tax payable by it was assessed by the Respondent as being €52,581.12.

4. The Appellant delivered its Notice of Appeal on 9 January 2020. The grounds on which the amended assessment was appealed were stated by the Appellant as follows:-

*“1. Case II figure of €818,753 is incorrect and excessive.*

*2. The Section 441 TCA 97 figure of €53,731 is incorrect and excessive.”*

5. No further expression of the Appellant’s grounds of appeal was included in the Notice of Appeal of 9 January 2020.
6. By way of email to the Tax Appeals Commission of 5 May 2021, just shy of 16 months after the delivery of the Notice of Appeal, the agent for the Appellant delivered outline written arguments in support of the appeal and other related appeals brought by it and its employee, director and owner concerning various years and tax heads. Therein, the agent acting for the Appellant suggested in the context of an appeal of a PAYE, PRSI & USC Notice of Estimation for the year 2012 that a payment of €1,177,000, which it had made to the employee, director and owner in that year, was a preferential loan rather than simple remuneration. As a consequence, it was not taxable under section 112 of the TCA 1997 as income received in the year 2012, but rather under section 122 of the TCA 1997 as perquisite received over various years, including the year 2014. The Appellant further submitted in this outline argument that *“any charge arising under S.122 TCA 1997 is a deductible expense under S.81 TCA 1997”*.
7. The Appellant elaborated on this in more comprehensive outline arguments delivered to the Tax Appeals Commission (“the Commission”) on the eve of the hearing of the appeal. Therein the Appellant submitted at paragraphs 52-56 that:-

*“The Respondent issued a Notice of Amended Assessment on December 17<sup>th</sup> 2019, which shows an additional quantum of corporation tax in the amount of €52,381.12.*

*The Appellant agrees with this additional liability with one exception.*

*We contend that the PAYE, etc on the BIK [i.e. the payment of €1,177.000], outlined above for this year, should be allowed as a deduction against the profits under the provisions of S.81 TCA 1997.*

*The additional PAYE, etc to be discharged by the Appellant company arises from a withdrawal by the director, and sole employee, to fund for his retirement. While the Appellant accepts that the mechanism was somewhat circumlocutory, the purpose was*

*nonetheless a bona fide expense. On this basis we contend that this deduction is wholly exclusively laid out for the purposes of the profession, and deductible in calculating the taxable profits of the company.*

*We ask the Commissioner to reduce the Assessment to €36,056 (being the current demand less the PAYE, etc of €82,625 x 20%).”*

8. In essence, what the Appellant was arguing therefore was that any finding that it had an obligation in respect of certain years to remit to the Respondent tax chargeable to its employee, director and owner under Schedule E in respect of the receipt of a preferential loan constituting a perquisite would have an impact on its corporation tax liability for the same year. This was so, it argued, on the grounds that the payment of the charge would constitute a deductible expense.
9. At the hearing of the appeal, the Respondent objected to the Commissioner considering this argument relating to the existence of a deductible expense having an impact on the Appellant's corporation tax liability for 2014 on the basis that it constituted the introduction of a ground not included in the Notice of Appeal. This, the Respondent submitted, was contrary to the law as prescribed by section 949I(6) of the TCA 1997. Having considered the submissions of the parties, the Commissioner decided that the Appellant was indeed seeking to introduce a ground not included in the Notice of Appeal contrary to that provision.
10. It is relevant also to observe that in the related appeal which concerned the taxation of the €1,177,000 payment made by the Appellant to its employee, director and owner in 2012, the Commissioner determined that it was not in fact a preferential loan constituting a perquisite made available to him over several years, including 2014, which was therefore chargeable to tax for those years under section 122 of the TCA 1997. On the contrary, the Commissioner held that it constituted remuneration paid by the Appellant to the employee, director and owner in the year 2012, which was, consequently, chargeable to income tax for that year alone.<sup>1</sup> In respect of this determination, the Appellant made no request to the Commission for an appeal on a point of law to the High Court under the case stated procedure.

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<sup>1</sup> 99TACD2023

## **Submissions**

### *Appellant*

11. Aside from the question of acceptance, the Appellant's only submission at hearing in the context of this appeal was that the charge to corporation tax should be reduced in the event that it was held in the context of another appeal that the sum of €1,177,000 constituted a perquisite in the form of a preferential loan outstanding in the year 2014, in respect of which tax was chargeable under section 122 of the TCA 1997.

### *Respondent*

12. Aside from arguing against acceptance of the ground sought to be advanced in the Appellant's written outline arguments, the Respondent argued that the payment of €1,177,000 was not, as contended by the Appellant, a preferential loan, but rather was taxable as income for the year 2012. The argument made was therefore in any event without substance.

## **Material Facts**

13. The facts material to the determination of this appeal are as follows:-

- by way of assessment raised by the Respondent on 17 December 2019 the Appellant was assessed as having a charge to corporation tax for the year 2014 of €156,075.12 and a balance payable of €52,381.12;
- the Appellant appealed this by way of Notice of Appeal of 9 January 2023. The Notice of Appeal stated that the Case II figure assessed was excessive, as was the corporation tax surcharge applied pursuant to section 441 of the TCA 1997;
- at the hearing of the appeal the Appellant sought to argue that the sum assessed should be reduced were it to be determined that the sum of €1,177,000 paid to the Appellant's employee, director and owner in 2012 constituted a preferential loan taxable as a benefit in kind in respect of which it had an obligation to remit PAYE to the Respondent for the year 2014. The Commissioner decided this to be a ground not included in the Appellant's Notice of Appeal, contrary to the requirements of the section 949I of the TCA 1997, and therefore refused to accept it;
- at the hearing the Appellant advanced no other ground supportive of the reduction of the assessment to corporation tax for the year 2014, raised by the Respondent on 17 December 2019;

- in the context of a separate, but factually related, appeal, the Commissioner determined that the payment of €1,177,000 in 2012 was not, in fact, a preferential loan taxable as a benefit in kind for each year it was made available to its employee, director and owner, but rather was remuneration paid to him for 2012 that was chargeable to income tax for that year.

### **Analysis**

14. The only ground argued by the Appellant in this appeal was one that the Commissioner decided could not be accepted by virtue of section 949I(6) of the TCA 1997. This decision, given orally at the hearing of the appeal, and thereafter communicated in writing on 8 November 2022, was final and conclusive and was not the subject of any challenge.
15. Accordingly, in light of the non-acceptance of this ground and the lack of the advancement of any other, what remains for the Commissioner to do is to confirm, pursuant to section 949AK of the TCA 1997, the assessment of the Respondent of 17 December 2019, whereby the Appellant was held to have an overall charge to corporation tax of €156,075.12 and a balance payable of €52,381.12.
16. While this determination is based on the fact that the only ground sought to be advanced by the Appellant was one that was not included in the Notice of Appeal, it is appropriate to observe that even had the ground been one that could have been accepted, the Appellant still would not have succeeded in having the assessment of 17 December 2019 varied in the manner argued. As noted already in this determination, this is because in the related appeal concerning the status of the sum of €1,177,000 paid to the Appellant in 2012, the Commissioner made a finding that it was not a perquisite in the form of a preferential loan that stood to be repaid. Rather, it was remuneration for 2012 that stood to be taxed for that year alone. As such there was no charge to tax under section 122 of the TCA 1997 that could have been treated as a deduction under section 81 of the TCA 1997 for the year 2014.

### **Determination**

17. The Commissioner finds that the amended assessment of the Respondent of 17 December 2019, whereby the Appellant was assessed as having a corporation tax liability for the year 2014 of €156,075.12 and a balance payable of €52,381.12, stands affirmed.
18. This appeal is determined pursuant to section 949AK of the TCA 1997. Any party dissatisfied with the determination in this regard has the right to appeal on a point or points

of law only within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.

A handwritten signature in black ink, appearing to read 'COHiggins', written in a cursive style.

Conor O'Higgins  
Appeal Commissioner  
05 September 2023