AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

16TACD2024

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against the refusal of the Revenue Commissioners ("the Respondent") to allow a claim for a research and development ("R&D") credit for the tax year 2020 in the amount of €1,229,116. The claim was refused by the Respondent on the ground that it was made out of time.

2. The appeal proceeded by way of an oral hearing on 19 October 2023. [redacted]

Background

3. The Appellant submitted its corporation tax return, form CT1, for 2020 on 22 September 2021. On 28 January 2022, the Appellant's agent contacted the Respondent via the Respondent's "My Enquiry" online system to state "*I would be grateful if you could please amend the 2020 R&D claim as part of the 2020 Form CT1 as follows: Panel 10.2(a)(i) – 1,229,116…*"

4. On 23 March 2022, the Respondent issued a notice of amended assessment ("the March assessment") to the Appellant. The notice was stated to have issued in accordance with section 959U of the Taxes Consolidation Act 1997 as amended ("TCA 1997"). The notice accounted for the amended R&D credit claim as submitted on 29 January 2022.

5. On 18 May 2022, the Respondent issued a further notice of amended assessment ("the May assessment"). This notice removed the R&D credit claim that had been submitted on 29 January 2022. The notice was stated to have issued in accordance with section 959U of the TCA 1997, and that, "*The assessment to which this notice refers was made in accordance with matters contained in a return made by you or in accordance with figures agreed with you. Section 959AI or Section 959AG (as appropriate) [TCA 1997] provides that no appeal may be made against such assessment*." Notwithstanding this, on 14 June 2022, the Appellant appealed against the May assessment to the Commission. The Commission gave this appeal the reference number [redacted].

6. On 21 June 2022, the Respondent issued a further notice of amended assessment ("the June assessment"). This notice contained the same figures as the May assessment, i.e. the Appellant's R&D credit claim was still removed. However, the notice was stated to have issued in accordance with Chapter 5 of Part 41A of the TCA 1997, and that, "*If you*

wish to appeal against the assessment to which this notice refers, you must do so within 30 days after the date of this notice…" On 19 July 2022, the Appellant appealed against the June assessment to the Commission. The Commission gave this appeal the reference number [redacted].

7. By agreement with the parties, the two appeals were subsequently consolidated under appeal number [redacted]. The appeal proceeded by way of a remote oral hearing on 19 October 2023.

Legislation

8. Section 766 of the TCA 1997 provides inter alia that

> *"(2) "Subject to subsection (2A) where for any accounting period a company makes a claim in that behalf, the corporation tax of the company for that accounting period shall be reduced by an amount equal to 25 per cent of qualifying expenditure attributable to the company as is referable to the accounting period."*
>
> *[…]*
>
> *(5) Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred."*

9. Section 932 of the TCA states that

> "*Except as provided in Part 41A or where otherwise expressly authorised by the Tax Acts, an assessment to income tax or corporation tax shall not be altered before the time for hearing and determining appeals and then only in cases of assessments appealed against and in accordance with such determination, and if any person makes, causes, or allows to be made in any assessment any unauthorised alteration, that person shall incur a penalty of €60*."

10. Section 959I(1) of the TCA 1997 states that

> "*Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form*."

11. Section 959K of the TCA 1997 states that

> "*In the case of a chargeable person who is chargeable to corporation tax for an accounting period, the return required by this Chapter shall include –*

(a) *all such matters, information, accounts, statements, reports and further particulars in relation to the accounting period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person under section 884, and*

(b) *such information, accounts, statements, reports and further particulars as may be required by the prescribed form*."

12. Section 959U of the TCA 1997 states that

"*(1) Where a chargeable person, or a person to whom section 959T applies, delivers a return but does not include a self assessment in the return, a Revenue officer, subject to section 959AA(1)—*

(a) shall, where section 959S applies, and

(b) may, in any other case,

make the self assessment in relation to the chargeable person.

(2) Where a self assessment is made under this section, a Revenue officer shall give notice of the assessment in accordance with section 959E.

(3) Any self assessment made by a Revenue officer under this section shall be deemed to be a self assessment made by the chargeable person and references in the Acts to the self assessment of a chargeable person shall be treated as including a self assessment made under this section."

13. Section 959V of the TCA 1997 provides inter alia that

"*(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.*

(2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self assessment for the chargeable period at the same time.

[…]

(6) (a) Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.

(b) Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief."

14. Section 959Y of the TCA 1997 provides inter alia that

"*(1) Subject to the provisions of this Chapter, a Revenue officer may at any time—*

(a) make a Revenue assessment on a person for a chargeable period in such amount as, according to the officer's best judgment, ought to be charged on the person,

(b) amend a Revenue assessment on, or a self assessment in relation to, a person for a chargeable period in such manner as he or she considers necessary…

(2) For the purpose of making an assessment on or in relation to a chargeable person for a chargeable period or for the purpose of amending such an assessment, a Revenue officer—

(a) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(b) may assess any amount of income, profits or gains or, as the case may be, chargeable gains, or allow any allowance, deduction, relief or tax credit by reference to such statement or particular."

15. Section 959AG of the TCA 1997 states that

"*No appeal may be made against—*

(a) a self assessment made under section 959R, section 959T or section 959U,

(b) a self assessment amended under section 959V,

(c) the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in such an assessment."

Submissions

Appellant

16. In written submissions, the Appellant's agent stated that the Appellant claimed total R&D credits in the amount of €1,609,170 on its CT1 form submitted on 22 September 2021. On 28 January 2022, it notified the Respondent that it was seeking to increase its R&D claim by a further €1,229,116. On 23 March 2022, the Respondent issued a notice of amended assessment to corporation tax which included the increased R&D claim. On 18 May 2022, the Respondent issued a further notice of amended assessment.

17. On 15 June 2022, the Appellant appealed against the May assessment raised by the Respondent. There is a mandatory prohibition in section 932 of the TCA 1997 on alterations to assessments which are under appeal. Notwithstanding this, the Respondent proceeded to raise a further notice of amended assessment (i.e. the June assessment) dated 21 June 2022. This was an unauthorised alteration.

18. Furthermore, it was stated on the notice of amended assessment dated 18 May 2022 that the assessment was made in accordance with section 959U. Section 959U applies where a chargeable person delivers a return but does not include a self- assessment in the return. The self-assessment made by the Respondent's officer under section 959U is deemed to be a self-assessment made by the chargeable person. However, the Appellant delivered a return and included a self-assessment in the return. The self-assessment showed a balance of tax payable of €1,773,342.37. The Appellant made a payment of €1,773,343 on 28 September 2021. Consequently, the Revenue Commissioners did not have the legislative authority to issue the notice of amended assessment dated 18 May 2022, and the assessment was void.

19. Section 959Y of the TCA 1997 provides that an officer of the Respondent may amend an assessment raised by the Respondent or a self-assessment in such manner as he or she considers necessary. The amended assessment dated 21 June 2022 did not set out the particulars of any amendments considered necessary by the Respondent's officer as the amounts were the same as the amended assessment issued on 18 May 2022. Consequently, the Revenue Commissioners did not have the legislative authority to issue the Notice of Amended Assessment dated 21 June 2022, and that assessment was void.

20. It was clear that the Appellant had made a valid R&D claim under section 766 of the TCA 1997. In *Gallic Leasing Limited v Coburn (Inspector of Taxes)* [1992] 1 All ER 336 ("*Gallic Leasing*"), the House of Lords concluded that a claim in a generalised form, in the absence of any legislative provision specifying a form of claim, would constitute a claim.

Lord Oliver of Aylmerton stated that for "*a claim to have any meaning at all must at least be a claim by an identified claimant to relief against identified or identifiable profits for an identified accounting period*."

21. The question of the proper construction of the word "claim" fell to be considered on the natural and ordinary meaning. There was no formality to the claim in section 766(2). The Appellant satisfied the natural and ordinary meaning of "claim" because the documents delivered by the Appellant on 22 September 2021 brought to the attention of Respondent that the corporation tax liability of the Appellant would be reduced by reference to research and development expenditure. The Respondent was alerted that the profits of the Appellant for the accounting period from for 1 January 2020 to 31 December 2020 would be reduced by reason of 'R&D credit', with the final amount of any reduction requiring to be ascertained. The quantification was subsequently produced. Applying the principles of statutory interpretation to section 766(2), and when evaluated by reference to the assessments issued by the Respondent which reflect the claim as 'R&D Credit', demonstrates that the Appellant made a claim under section 766. The Respondent acknowledged that a claim had been made by the Appellant by issuing the Notice of Amended Assessment dated 23 March 2022 and showing 'R&D Credit' of €2,838,286 to give effect to the quantification of the amount of the 'R&D Credit' for the accounting period 1 January 2020 to 31 December 2020.

22. The Respondent did not have the legislative authority to issue the amended assessment dated 18 May 2022. The Respondent subsequently caused an unauthorised alteration of the amended assessment by issuing an amended assessment dated 21 June 2022. In any event, the Respondent did not have the legislative authority to issue the amended assessment dated 21 June 2022. In the circumstances, the notice of amended assessment dated 23 March 2022 represented the correct tax position of the Appellant for the accounting period 1 January 2020 to 31 December 2020.

23. In oral submissions, counsel stated that the May assessment was purported to have been made under section 959U of the TCA 1997. However, it was clear that it could not have been made under section 959U, and instead that someone within the Respondent had made the assessment. The notice of amended assessment that issued in June was not correcting the previous notice, because any such correction could have been done by way of a letter. The June assessment was raised after the Appellant had appealed the May assessment, and consequently the Respondent had lost its jurisdiction and was *functus officio* at that stage. Therefore, it could not be valid.

24. The Commissioner would stray into error if he questioned the validity of a notice of assessment, but it was not the notices but the assessments themselves that were at issue; *Viera Ltd v Revenue Commissioners* [2009] IEHC 431. The Commissioner was required to decide which, if either, of the appeals was valid, and such a decision would require evidence. But no evidence had been provided by the Respondent; *JSS v Tax Appeals Commission* [2020] IECA 73 ("*JSS*"). The validity of the appeal arose in the context of whether there was an assessment or not.

25. The Appellant had made a claim under section 766 and had sought to clarify that claim after the expiry of the twelve month period. The legislature had not clearly prevented the clarification of a claim after it had been made. The Respondent was entitled to take into account matters which a taxpayer might not be able to, and therefore the Commissioner could also do so on appeal. The Respondent had previously amended returns to its advantage, and it was unfair that it would do so to its advantage but not to the Appellant's. However it was accepted that the Appellant could not seek to rely on estoppel before the Commission.

26. In *Gallic Leasing*, the House of Lords held that

> "*For the purposes of section 258, however, the making of a claim served no purpose other than that of alerting the inspector to the fact that reliefs were to be sought by the claimant company and accordingly a valid claim did not require the claimant company to identify the surrendering companies or the amount of the reliefs to be surrendered at the time of making the claim*."

27. Similarly, under the TCA 1997, there was nothing to say that the full details of the claim had to be provided when making the claim. There was nothing in the legislation preventing the Commissioner taking the same approach as the House of Lords in *Gallic Leasing.* The claims on the CT1 form for 2019 and 2018 were claims for the purposes of section 766, and panel 10.17 on the form was the total R&D credit claimed in the accounting period.

Respondent

28. In written submissions, counsel on behalf of the Respondent stated that the Appellant failed to make an R&D claim within the time prescribed by section 766 of the TCA 1997. The application of the time limit is mandatory and there is no discretion to extend it. The Appellant had claimed that it had validly corrected a claim made in time. However, the right to amendment was not absolute and was curtailed by section 959V(6)(b) of the TCA 1997.

29. The prescribed form for the making of a claim pursuant to section 766 was the CT1 form. The 2020 CT1 form prescribed specific boxes for claiming an R&D credit in respect of the 2020 accounting period.

30. On 22 September 2021, the Appellant filed its 2020 corporation tax return. The amount of €1,609,170 represented the total R&D claim made by the Appellant for 2020 and consisted of:

    - €981,203 of unused credit carried forward under s. 766(4B)(b)(ii)(I) from a previous R&D claim made in 2019 tax year; and
    - €627,967 of unused credit carried forward under s. 766(4B)(b)(iii)(I) from a previous R&D claim made in 2018 tax year.

31. The Appellant did not claim any credit under "*Sec. 766 in this accounting period at 25% (include here any amounts surrendered under Sec. 766 (2A))*". Subsequently, on 28 January 2022 the Appellant sought to amend its 2020 CT1 to include a claim for a tax credit under section 766 in the sum of €1,229,116. On 23 March 2022 a Notice of Amended Assessment issued by the Respondent in error for the 2020 year of assessment which granted the Appellant the 2020 R&D credit and generated a refund of €1,229,116.63.

32. However, in seeking to make the payment, the Respondent ascertained that the Appellant's claim for the 2020 R&D credit had not been made in time. A further Notice of Amended Assessment issued on 18 May 2022 under Chapter 4 of Part 41A of the TCA 1997 withdrawing the 2020 R&D credit that had been granted in error. This notice was stated to have been made under Chapter 4 of Part 41A of the TCA 1997 and the assessment had been raised in accordance with section 959U of the TCA 1997. However, in accordance with section 959AG, no appeal may be made against an assessment made under section 959U of the TCA 1997. This assessment was appealed by the Appellant by notice of appeal dated 14 June 2022 and was assigned appeal reference [redacted] However, an assessment made under section 959U is not appealable to the Commission.

33. Therefore, the May assessment was raised in error. A further notice of amended assessment issued by the Respondent on 21 June 2022 pursuant to Chapter 5 of 41A of the TCA 1997. This assessment was appealed by the Appellant by notice of appeal dated 19 July 2022 and was assigned appeal reference [redacted] by the Commission. This was the only valid appeal before the Commission. While the Appellant had claimed that the May and June assessments were invalid, this was not something that the Commission had jurisdiction to consider; *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"). In

any event, the Respondent denied that there was any issue of validity with the June assessment.

34. In oral submissions, counsel stated that there was only one assessment before the Commissioner, which was the June assessment. Unlike in *JSS*, this was not a mixed question of law and fact, but was a question of law only. Therefore, the issue of the Respondent giving evidence did not arise. Section 932 of the TCA 1997 did not apply, as the May assessment was not appealable.

35. In *Gallic Leasing*, there was no prescribed form in the UK for the purposes of group relief. In this instance, there was a prescribed form under section 959A of the TCA 1997, the return had to be filed using the prescribed form under section 959I, and the information that was in the form had to be completed under section 959K. Therefore, it was not a case about a claim being made and subsequently clarified, but was a case about a claim not being made in time in accordance with the legislation. The Appellant had not suggested that it had put its 2020 R&D claim in any other box on the CT1 form, or that the form was in any way misleading. This was crystal clear from the email sent by the Appellant's agent on 28 January 2022 requesting the Respondent to amend the CT1 form by entering the amount of €1,229,116 in panel 10.2(a)(i).

36. The Respondent considered that the Appellant had sought to amend its CT1 form under section 959V of the TCA 1997. Subsection (6) provides that any amendment must be made within the timeframe prescribed by section 766(5).

Material Facts

37. The parties submitted an agreed statement of facts. There was no oral evidence proffered at the hearing. Having regard to the agreed statement of facts, as well as to the other documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:

    37.1. The Appellant is a company [redacted]

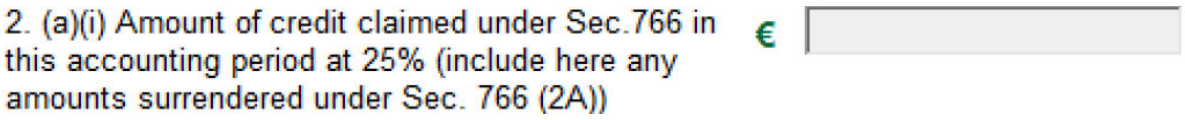
    37.2. On 22 September 2021, the Appellant's agent, [redacted], filed the Appellant's CT1 form on its behalf, in respect of the accounting period from 1 January 2020 to 31 December 2020.

37.3. The Appellant's CT1 form for 2020 stated inter alia that the amount of profits chargeable to tax was €26,669,421, and the balance of tax payable was €1,773,342.

37.4. The total R&D credit claimed in the Appellant's CT1 form was €1,609,170. This claim entirely consisted of unused credit carried forward from previous R&D claims in 2019 and 2018.

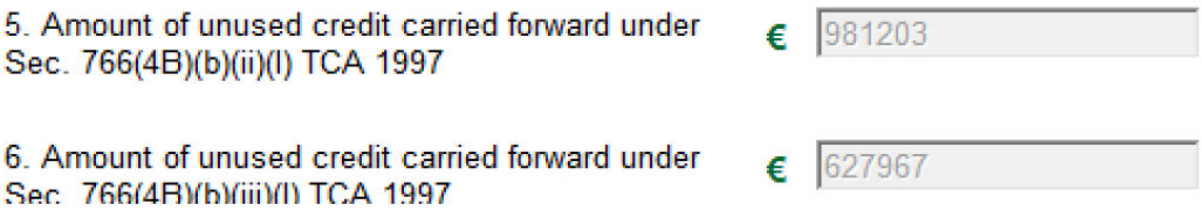
37.5. Part 10 of the CT1 form is headed "Research and Development Credit and Allowances". Panel 10.2(a)(i) is for "*Amount of credit claimed under Sec. 766 in this accounting period at 25%*". This panel has to be completed in order to make an R&D claim for credit at 25% for expenditure during the accounting period in question.

37.6. There was no entry in panel 10.2(a)(i) of the Appellant's CT1 form, which was left blank:



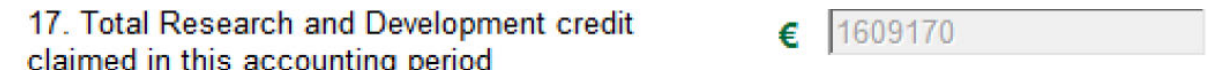
Therefore, no claim was made by the Appellant for an R&D credit in respect of R&D expenditure incurred during 2020 on the Appellant's CT1 form for 2020.

37.7. Panels 10.5 and 10.6 of the CT1 form are for the amount of unused R&D credit carried forward from previous accounting periods. On the Appellant's CT1 form they were completed as follows:



Therefore, the Appellant carried forward €981,203 of unused credit from a previous R&D claim made in the 2019 tax year and €627,967 of unused credit from a previous R&D claim made in the 2018 tax year.

37.8. Panel 10.17 of the CT1 form is "*Total Research and Development credit claimed in this accounting period*." On the Appellant's CT1 form this was completed as follows:



37.9. The total R&D credit claimed by the Appellant on its CT1 form for 2020 was the sum of the amounts of unused credit carried forward from 2019 and 2018.

37.10. On 28 January 2022, the agent of the Appellant who had submitted the CT1 form contacted the Respondent to seek to amend the Appellant's CT1 form to include a claim in panel 10.2(a)(i) in respect of expenditure on R&D during 2020 in the amount of €1,229,116. The deadline for submission of an amendment to the Appellant's R&D claim for 2020 was 31 December 2021.

37.11. On 23 March 2022, the Respondent issued a notice of amended assessment to corporation tax for the tax year 2020 which included the Appellant's claim in respect of expenditure on R&D during 2020 in the amount of €1,229,116.

37.12. On 18 May 2022, the Respondent issued a notice of amended assessment to corporation tax for the tax year 2020 which removed the Appellant's claim in respect of expenditure on R&D during 2020 in the amount of €1,229,116. The notice was stated to have issued in accordance with section 959U of the TCA 1997, and that, "*The assessment to which this notice refers was made in accordance with matters contained in a return made by you or in accordance with figures agreed with you. Section 959AI or Section 959AG (as appropriate) [TCA 1997] provides that no appeal may be made against such assessment*."

37.13. On 15 June 2022, the Appellant appealed against the May assessment raised by the Respondent to the Commission. The Commission gave this appeal the reference number [redacted].

37.14. On 21 June 2022, the Respondent issued a further notice of amended assessment to corporation tax for the tax year 2020. The figures in this notice were the same as those in the notice of amended assessment dated 18 May 2022, i.e. the Appellant's claim in respect of expenditure on R&D during 2020 in the amount of €1,229,116 was still removed. However, the notice was stated to have issued in accordance with Chapter 5 of Part 41A of the TCA 1997, and that, "*If you wish to appeal against the assessment to which this notice refers, you must do so within 30 days after the date of this notice…*"

37.15. On 19 July 2022, the Appellant appealed against the June assessment raised by the Respondent to the Commission. The Commission gave this appeal the reference number [redacted]. By agreement with the parties, the Commission subsequently consolidated both appeals under reference number [redacted].

Analysis

38. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to disallow its claim in the amount of €1,229,116 for R&D expenditure incurred during the year 2020. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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.*"

39. The Commissioner is satisfied that the issue of whether or not the Appellant's R&D claim for expenditure occurred during 2020 was made out of time is the substantive question to be determined in this appeal. However, there is a preliminary issue under dispute regarding which (if either) of the appeals, reference numbers [redacted] and [redacted], is valid. The Commissioner will consider this issue first before addressing the substantive matter.

Preliminary Issue

40. The Respondent states that no appeal lies in respect of the May assessment, and therefore only the appeal against the June assessment is valid. The Appellant has queried the validity of both the May and June assessments, and submits that only the March assessment (which allowed the Appellant's R&D claim for 2020) is valid.

41. In its submissions, the Commissioner understood the Appellant to seek to differentiate between notices of assessment, the validity of which could not be questioned by the Commissioner, and the assessments themselves. The Appellant argued that the Commissioner was entitled to consider whether the assessments were validly made by the Respondent.

42. However, the Commissioner considers that the Appellant's arguments, in respect of his alleged jurisdiction to determine the validity of the various assessments, are fundamentally misconceived. While the Commissioner can consider the validity of an *appeal* to the Commission (see, e.g. section 949J of the TCA 1997), he cannot consider the validity of an *assessment* raised by the Respondent. The Commissioner considers that the law in this regard was clearly enunciated by the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18, wherein Murray J stated that

> "*20. The issue is, first and foremost, one of statutory construction. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as*

they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.

[…]

31…Read together the provisions strongly suggest what is envisaged by s. 933 and the supporting legislative scheme is an appeal against an assessment alone directed solely to whether the Inspector has properly reflected the statutory charge to tax in the assessment itself, with the Appeal Commissioners abating, reducing, letting stand or indeed increasing the assessment as appropriate in the light of the facts and law found relevant to that inquiry…

[…]

40…It is of course clear that if an assessment to tax is made ultra vires the powers vested in the Inspector or upon the basis of an arbitrary or capricious premise, the legality of the assessment can be challenged by way of judicial review…

[…]

52… Whatever the correct analysis of the jurisdiction of the [Appeal Commissioners], there is no question of it extending to enable the Commissioners to issue declarations of invalidity of any kind. That is a function vested in the Courts…

[…]

64. I have explained earlier why I do not believe that the provisions of the TCA accommodate this construction. From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment…

[…]

68… The real point is that none of these forms of action has been entrusted to the jurisdiction of the Appeal Commissioners not because of their general legal categorisation, but because that jurisdiction is directed to the assessment and statutory charge alone. Arguments as to contract, legitimate expectation, estoppel or other theories which might, through one or more aspects of the general law operate to prevent Revenue from issuing, acting on or (as the case may) enforcing that assessment do not come within the jurisdiction so defined.

[…]

76. The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933,934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid." (emphasis added)

43. While the judgment in *Lee* was concerned with the predecessor to the Commission, and the relevant statutory provisions applying in that case, the Commissioner is satisfied that the same principles apply in this instance. The Tax Appeals Commission was established by the Finance (Tax Appeals) Act 2015 as the successor to the Office of the Appeals Commissioner, and Part 40A of the TCA 1997 applies to appeals made to the Commission. Section 949AK of the TCA 1997 provides that the Appeal Commissioners may reduce or increase an assessment, or determine that the assessment stand. The Appellant did not direct the Commissioner to any provision of the TCA 1997 enabling him

to determine the validity of an assessment, and the Commissioner is unaware of any such provision. Consequently, he is satisfied that he has no jurisdiction to determine that any of the March, May or June assessments are invalid, and he declines to do so. He is satisfied that the circumstances herein are very different from those in *JSS*, which concerned whether the appellants were, inter alia, resident in Ireland. That was a question of fact that required evidence to be determined; however, no such questions of fact arise in respect of the validity of the appeals herein.

44. Furthermore, the Commissioner considers that it follows from the lack of jurisdiction to determine the validity of the assessment, that he does not have the power to look behind the statutory provision invoked by the Respondent when raising an assessment. Consequently, while the Appellant contended that the Respondent was not entitled to invoke section 959U to raise the May assessment (and the Respondent conceded that this was an error on its part), the Commissioner cannot rely on this error to determine that the May assessment was invalid, or to amend the assessment to apply the "correct" statutory provision. Such a determination would fall within the scope of judicial review proceedings in the High Court, and is not within the jurisdiction of the Commission. As stated by Murray J at paragraph 31 of *Lee*,

> "…*the provisions strongly suggest what is envisaged by s. 933 and the supporting legislative scheme is an appeal against an assessment alone…"*

Therefore, the Commissioner considers that he must accept what is stated on the face of the notice of amended assessment dated 18 May 2022; i.e. that it was raised in accordance with section 959U of the TCA 1997, and that as a result no appeal could be made against the assessment. This is because section 959AG(a) states that no appeal may be made against an assessment made under (inter alia) section 959U.

45. Consequently, as the notice of amended assessment dated 18 May 2022 stated that no appeal could be made against that assessment, it follows that the appeal that the Appellant purported to make against it is invalid. Section 949J(1)(a) of the TCA 1997 provides that an appeal shall be valid if it is made in relation to an appealable matter. "Appealable matter" is defined by section 949A as "*any matter in respect of which an appeal is authorised by the Acts*." However, section 959AG(a) provides that no appeal may be made against an assessment made under section 959U. Therefore, the May assessment was not an appealable matter, and the appeal brought by the Appellant against it is invalid.

46. On the other hand, the notice of amended assessment dated 21 June 2022 was stated to be made in accordance with Chapter 5 of Part 41A of the TCA 1997, and an appeal

against this assessment lies under section 959AF. Therefore, the Commissioner is satisfied that the appeal dated 19 July 2022, against the June assessment, is valid.

47. The confusion arising from the issuance of three notices of amended assessment by the Respondent, two of which (March and May) were, by its own admission, incorrect, is unfortunate. Nevertheless, the Commissioner does not consider that the Appellant was prejudiced by the raising of the June assessment by the Respondent, as it provided the Appellant with a right of appeal against the Respondent's decision to disallow the claim for an R&D credit for 2020.

48. Finally in respect of this issue, the Appellant contended that the Respondent had breached section 932 of the TCA 1997 by raising the June assessment after the issuance of its appeal against the May assessment. While such argument was not made by the Respondent, it seems to the Commissioner that section 932 is no longer operative and therefore of no relevance to this appeal. This is because section 23 of the Finance (Tax Appeals) Act 2015 states that, "*Part 40 shall not apply to an appeal made on or after the commencement date*." Section 932 is within Part 40 of the TCA 1997, and the commencement date of the 2015 Act was 21 March 2016. Nevertheless, even if that section was operative, the Commissioner would find that, as there was no appeal arising against the May assessment, the Respondent did not breach section 932.

49. In conclusion, the Commissioner is satisfied that the appeal brought by the Appellant on 14 June 2022 against the May assessment, which was given the reference number [redacted] by the Commission, is invalid. On the other hand, the appeal brought by the Appellant on 19 July 2022 against the June assessment, which was given reference number [redacted] by the Commission, is valid. Therefore, this Determination concerns the appeal against the June assessment only.

Substantive Issue

50. Turning now to the Respondent's decision not to allow the claim, which is the substantive matter of the appeal, the question to be determined is whether the claim made by the Appellant in its CT1 form submitted on 22 September 2011 satisfied the requirements of section 766(5) of the TCA 1997. The Appellant submits that it made a valid claim, which it subsequently sought to amend. The Respondent submits that no claim was made on the CT1 form, which simply carried forward unused credit from the Appellant's 2019 and 2018 R&D claims.

51. Section 766(5) states that,

"*Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred*."

52. As previously stated by the Commissioner in 113TACD2022,

"*The use of "shall" in section 766(5) indicates that the timeframe for application is mandatory, and that no exceptions to this timeframe are permitted. Therefore, an application must be made within the twelve month timeframe to be valid*."

53. The CT1 form is the prescribed form for the making of corporation tax returns. Section 959I of the TCA 1997 obliges a taxpayer to make a return using the prescribed form, and section 959K requires a taxpayer completing a corporation tax return to provide the information required by the CT1 form. Part 10 of the CT1 form is headed "Research and Development Credit and Allowances". Panel 10.2(a)(i) is for "*Amount of credit claimed under Sec. 766 in this accounting period at 25%*". The Commissioner is satisfied that the effect of sections 959I and 959K is that this panel has to be completed in order to make an R&D claim under section 766 for credit at 25% in respect of expenditure incurred during the accounting period in question.

54. In this instance, the Appellant left blank the box on the CT1 form at panel 10.2(a)(i):

2. (a)(i) Amount of credit claimed under Sec.766 in this accounting period at 25% (include here any amounts surrendered under Sec. 766 (2A))	€	

Therefore, no claim was made for "*credit claimed under Sec.766 in this accounting period*".

55. Panels 10.5 and 10.6 of the CT1 form are for the amount of unused R&D credit carried forward from previous accounting periods. On the Appellant's CT1 form they were completed as follows:

5. Amount of unused credit carried forward under Sec. 766(4B)(b)(ii)(I) TCA 1997	€	981203
6. Amount of unused credit carried forward under Sec. 766(4B)(b)(iii)(I) TCA 1997	€	627967

56. Section 766(4B)(b) states that

"*Subject to section 766B, on receipt of a claim the Revenue Commissioners shall pay any excess remaining to the company, in 3 instalments –*

(i) the first instalment shall be paid by the Revenue Commissioners not earlier than the date provided for in paragraph (b) of the definition of 'specified return date for the chargeable period' as defined in section 959A, for the accounting period in which the expenditure on research and development was incurred and shall equal 33 per cent of the excess remaining,

(ii) in respect of the second instalment –

(I) the excess remaining, as reduced by the first instalment under subparagraph (i), shall be first treated as an amount by which the corporation tax of the accounting period next succeeding the accounting period in which the expenditure giving rise to the claim under this subsection was incurred, is reduced in accordance with subsection (4), and

(II) the second instalment shall be paid by the Revenue Commissioners not earlier than 12 months immediately following the date referred to in subparagraph (i) and shall equal 50 per cent of the amount of the excess remaining as reduced by the aggregate of the first instalment under subparagraph (i) and the amount treated as reducing the corporation tax of an accounting period under clause (I),

and

(iii) in respect of the last instalment –

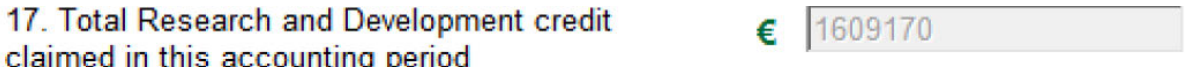
(I) the excess remaining, as reduced by the first and second instalments and by the amount treated as reducing the corporation tax of an accounting period under clause (I) of subparagraph (ii), shall be first treated as an amount by which the corporation tax of the accounting period next succeeding the accounting period referred to in clause (I) of subparagraph (ii) is reduced in accordance with subsection (4), and

(II) *the last instalment shall be paid by the Revenue Commissioners not earlier than 24 months immediately following the date referred to in subparagraph (i) and shall equal the amount by which the excess remaining is reduced by the first and second instalments and by the total of the amounts by which the corporation tax of an accounting period is reduced under clause (I) of subparagraph (ii) and under clause (I) of this subparagraph*."

57. Therefore, sections 766(4B)(ii) and (iii) concern the payment by instalments of R&D claims made prior to the accounting period in question. This is also reflected in the

wording on the relevant sections of the CT1 form, which refer to the "*Amount of unused credit carried forward*" from previous accounting periods.

58. Panel 10.17 of the CT1 form is "*Total Research and Development credit claimed in this accounting period*." On the Appellant's CT1 form this was completed as follows:



Therefore, the Commissioner finds that the total R&D credit claimed by the Appellant on its CT1 form for 2020 (i.e. €1,609,170) was the sum of the amounts of unused credit carried forward from 2019 (i.e. €981,203) and 2018 (i.e. €627,967).

59. In determining whether the Appellant made a claim in time in respect of R&D expenditure incurred in 2020, it must be borne in mind that section 766(5) requires that a claim must be made within 12 months "*from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred*."

60. In *Perrigo Pharma International Activity Company v McNamara* [2020] IEHC 552, McDonald J stated at paragraph 74 that

> "*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*
>
> > *(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
> >
> > *(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*
> >
> > *(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, 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;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible".*

61. In *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43, the Supreme Court recently reiterated that the words of the statute should be given their ordinary and natural meaning, while being viewed in context. At paragraph 106, Murray J stated that

> "*The judgment of McKechnie J. in [Brown; Minister for Justice v Vilkas [2018] IESC 69] provides a good summary that is reflected in the other decisions: indeed, it was cited*

at some length and relied upon in the course of the judgment of the Court of Appeal in this case. The essential points he made were as follows:

> *(i) The first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning (at paras. 92 and 93).*
>
> *(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include ' the immediate context of the sentence within which the words are used; the other subsections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including … LRC or other reports; and perhaps … the mischief which the Act sought to remedy' (at para. 94).*
>
> *(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language (see para. 92).*
>
> *(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted (at para. 95)."*

62. In this instance, the Commissioner is satisfied that the meaning of section 766(5) is plain and self-evident; a claim for R&D must be made within twelve months from the end of the accounting period in which the R&D expenditure is incurred. The Commissioner does not consider this requirement to be ambiguous or unclear; nor does the context of the requirement within the rest of section 766, or within the TCA 1997 in general, suggest any other interpretation. Furthermore, it cannot be said that this literal interpretation gives rise to an absurdity. Therefore, the Commissioner is satisfied that it is appropriate to conclude that "*the ordinary, basic and natural meaning of the words should prevail*". In passing, he also notes that this is a case where the Appellant seeks an exemption from taxation, and therefore the principle set out in *Revenue Commissioners v. Doorley* [1933] I.R. 750, that all such exemptions must be interpreted strictly, applies.

63. Consequently, the Commissioner is satisfied that it was necessary for the Appellant to make its R&D claim for 2020 within 12 months of the end of that accounting period, i.e. by 31 December 2021. However, the evidence clearly shows that the Appellant did not

do so, as the relevant box on the CT1 form, panel 10.2(a)(i), was left blank. The Appellant is a substantial company that had the benefit of assistance from tax advisors in preparing and submitting its CT1 form. The Commissioner notes that no evidence was provided by the Appellant, either from the agent who submitted the CT1 form or otherwise, regarding the circumstances surrounding the submission of the CT1 and in particular the completion of Part 10 concerning R&D claims and allowances. In any event, no case was made by the Appellant that the relevant R&D expenditure for 2020 was mistakenly entered on the form in a panel other than 10.2(a)(i).

64. The Commissioner does not agree with the Appellant that the carrying forward of unused credit from previous claims on the CT1 satisfies the requirements of section 766(5), which requires that a claim under section 766 "*shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred*." The unused credit carried forward was not expenditure incurred during 2020, but was rather incurred in 2019 and 2018. Therefore, the Commissioner is satisfied that the insertion of figures in panels 10.5 and 10.6 of the CT1 does not constitute a "*claim*" for the purposes of section 766, as stipulated by section 766(5).

65. Consequently, the Commissioner is satisfied that the Appellant did not claim for its R&D expenditure incurred during 2020 within the time period prescribed by section 766(5) of the TCA 1997, and therefore he determines that the appeal cannot succeed. As he has found that no claim was made within time, that is the end of the matter, and it is not necessary to make any findings in respect of the subsequent request by the Appellant's agent, on 28 January 2022, to amend the Appellant's CT1 form to include the 2020 claim. However, the Commissioner notes that, while section 959V of the TCA 1997 permits the amendment of a return, section 959V(6)(b) provides that,

> "*Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief*."

66. Therefore, the Commissioner is satisfied that section 959V does not extend the time for the making of an R&D claim beyond that specified in section 766(5). While the Appellant did not concede that its request to amend its CT1 form was made pursuant to section 959V, it did not point the Commissioner to any other provision of the TCA 1997 under which the request for amendment was made, and therefore the Commissioner is satisfied

that there is no basis for him to conclude that the timeframe set out in section 766(5) could be extended in this instance.

67. Finally, the Commissioner does not consider that *Gallic Leasing* can be successfully relied upon by the Appellant to allow its claim. That case concerned the claiming of group relief by the taxpayer, for which there was a two-year time limit. The taxpayer submitted its corporation tax computation to the inspector, which it stated was subject to a claim for group relief, within the time limit. A schedule of group relief was subsequently submitted after the time limit had passed. The House of Lords was satisfied that a claim had been made by the taxpayer within time, albeit the amount of the claim had not been identified. Lord Oliver stated at page 343 that

> "*In the end, the submission [of the Crown] came down to this, that the time limit imposes a requirement that before its expiry the claimant company must not only commit itself to claiming group relief but must commit itself irrevocably to the precise amounts or proportions claimed from each source of relief in each surrendering company, albeit it may not know either the extent of the reliefs available or whether consent to surrender to this extent or at all is going to be given. I find no warrant in the terms of the section for this requirement*."

68. However, as set out herein, the Commissioner is satisfied that plain meaning of section 766(5) of the TCA 1997 is that a claim for R&D credits must be made within twelve months of end of the accounting period during which the R&D expenditure incurs, and that, in this case, no claim for R&D credits for 2020 was made by the Appellant within the time prescribed. Therefore, the question of subsequent amendment of any such claim does not arise. Furthermore, the Commissioner notes that in *Gallic Leasing* the House of Lords commented on the failure by the Board of Inland Revenue to provide a prescribed form for the making of a claim for group relief. By contrast, in this jurisdiction the Respondent has prescribed CT1 form as the relevant form for the making of a corporation tax return, and part 10 thereof concerns the making of R&D claims. Section 959I of the TCA 1997 obliges a taxpayer to make a return using the prescribed form, and section 959K requires a taxpayer completing a corporation tax return to provide the information required by the CT1 form. Consequently, the Commissioner is satisfied that *Gallic Leasing* is distinguishable from the facts and law applicable in this instance.

Determination

69. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that:

    i. The assessment raised by the Respondent by notice dated 18 May 2022 was not appealable, and therefore the appeal against it brought by the Appellant dated 14 June 2022 is invalid;

    ii. The assessment raised by the Respondent by notice dated 21 June 2022 was appealable, and therefore the appeal against it brought by the Appellant dated 19 July 2022 is valid; and

    iii. The Appellant did not make a claim for an R&D credit for expenditure incurred by it during 2020 within the time prescribed by section 766(5) of the TCA 1997, and therefore the assessment raised by the Respondent by notice dated 21 June 2022 stands.

70. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

71. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

72. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
09/11/2023

Appendix – Table of Cases mentioned in this Determination