



**21TACD2018**

**NAME REDACTED**

**BETWEEN/**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against an assessment to income tax regarding the tax year of assessment 2014, in relation to section 997A of the Taxes Consolidation Act 1997, as amended ('TCA 1997').
2. During the relevant tax year of assessment, the Appellant was a 40% shareholder in X Limited ('the company'). In 2014, tax deducted from salaries was not fully remitted by the company to the Respondent. The company subsequently went into liquidation.
3. On 9 Nov 2016, the Respondent raised an assessment to income tax in respect of the tax year of assessment 2014, in the sum of €4,577.33, pursuant to the provisions of s.997A TCA 1997. The Appellant duly appealed.

**Legislation**

4. The relevant legislative provision is section 997A TCA 1997 which is set out at **Appendix I** below.



## Submissions

5. The Appellant, being a 40% shareholder in the company, did not dispute that he was a person with a '*material interest*' in the company in accordance with s.997A TCA 1997. He accepted that the company failed to remit certain taxes in relation to his emoluments in respect of the tax year of assessment 2014. However, he stated that he was unaware that tax was not being remitted in respect of the payslips received as the payslips were produced by a payroll specialist and no adverse aspects in this regard had been brought to his attention.
6. The Appellant discussed in his evidence, his discovery of inconsistencies in relation to some financial transactions within the company and he stated that he tried to resolve these but ultimately took steps to wind up the company. He gained the support of various creditors of the company despite shortfalls in payment to these creditors by the company. He did not dispute the interpretation of the legislation but submitted that he had been unaware of his legal and taxation obligations as regards the application and operation of section 997A TCA 1997.
7. The Respondent sympathised with the Appellant but submitted that a liability in accordance with s.997A arose and that the Respondent was obliged to raise an assessment to tax in such circumstances.

## Analysis and findings

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

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

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



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

9. Section 997A(3) provides: *'Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies [shall be given against the amount of tax chargeable in any assessment] raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.'*
10. The Appellant did not dispute the fact that he was a proprietary director and that tax deducted from emoluments in respect of the year 2014 had not been remitted by the company. The Appellant submitted that he was unaware of the legal and taxation obligations in relation to s.997A, while the Respondent submitted that where tax due was not remitted, it remained payable in accordance with s.997A.

### **Conclusion**

11. The wording of s.997A is clear in that it provides that *'no credit ..... shall be given'* in the circumstances which arise in the within appeal, namely, where the tax deducted by the company in respect of the emoluments of the Appellant was not remitted to the Respondent. Thus I do not consider that I have discretion to depart from the clear statutory wording of s.997A and as a result, I have no alternative but to determine that the assessment dated 9 November 2016 in the sum of €4,577.33 shall stand.
12. This appeal is hereby determined in accordance with section 949AK TCA 1997.

**APPEAL COMMISSIONER**

**August 2018**

**This case has not been appealed**



## Appendix I

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

[(1) (a) In this section—

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

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

(b) For the purposes of this section—

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

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

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

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

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

(5) Where, in accordance with *subsection (4)*, tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies,



the tax to be so treated shall, if there is more than one such person, be treated as having been deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.]

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

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

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

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

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

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

(i) firstly against employment contributions,

(ii) secondly against universal social charge, and

(iii) lastly against income tax.

[(8) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, the provisions of *section 949* shall apply to such decision as if it were a determination on a matter referred to in *section 864*.]

