



AC Ref: 13TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. The Appellant operates a [REDACTED] practice in [LOCATION] and is subject to tax in accordance with section 18 of the Taxes Consolidation Act 1997 as amended ("TCA 1997"). Pursuant to section 81(2) TCA 1997 the Appellant claimed deductions in respect of wages in the sums of €18,200 in respect of the tax year of assessment 2012 and €39,125 in respect of 2013 in relation to Miss X, his sister, who he submitted was his employee during the relevant tax years of assessment.
2. The Respondent disallowed the deductions on the basis that such deductions were not '*wholly and exclusively laid out or expended for the purposes of the trade or profession*' in accordance with s.81(2) TCA 1997.
3. The Respondent raised assessments on 16 March 2015 and on 19 March 2015 in respect of the tax years of assessment 2012 and 2013, in the sums of €10,116 and €25,543 disallowing the deductions claimed.



Legislation

Section 81 (General rule as to deductions)TCA 1997

(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of -

(a) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession

...

...etc.

Section 886 (Obligation to keep certain records)TCA 1997

(1) In this section-

“linking documents” means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

“records” includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to-

(a) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,

(b) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,

(c) the assets and liabilities of the trade, profession or other activity referred to in paragraph (a) or (b), and

(d) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.

(2)(a) Every person who-

(i) on that person’s own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,





(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept-

(a)

(b)

(4) (a).....

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

..... etc.

Submissions and evidence

4. At hearing, both the Appellant and his sister, Miss X, gave evidence. The Appellant in evidence stated that he established the practice in [YEAR REDACTED] and that he had two employees namely, Employee Y, and Miss. X, his sister.

Hourly rate

5. Miss X was in fifth year in school and aged 17 when she began working in the Appellant's practice. She sat her leaving certificate in June 2013. Under cross examination by the Respondent as to the terms of Miss X's employment, the Appellant stated that Miss X carried out work as an assistant and receptionist albeit she had no qualifications at that time and



was still attending school. When questioned by the Respondent as to Miss X's rate of pay of approximately €14.50 per hour in 2012 and €19.50 per hour in 2013 the Appellant stated *'her wages were a reflection of what I think she was worth'*.

6. The Respondent submitted that it would be irregular that a leaving certificate student with no qualifications would be remunerated at this level and submitted that the hourly rates of pay to Miss X far exceeded market level rates for such employment and were thus overstated.

Working Hours

7. Miss X in evidence stated that she started working for the Appellant in 2011. She stated that in 2012 she worked every evening after school for 3 hours and that she worked full days on Saturdays. The Appellant had previously stated in evidence that he closed the practice at 5pm/6pm on week days however Miss X stated in evidence that she worked there for 3 hours after school (which she stated was 5 minutes walking distance from the practice) from approximately 4pm to 7pm. When questioned by the Respondent as to what tasks she carried out with the Appellant not present, she stated that she carried out cleaning tasks in relation to the equipment.
8. In 2013, Miss X sat her leaving certificate. She stated in evidence that she *'drove to [LOCATION AT DISTANCE] every day'* as part of her employment in 2013, collecting and delivering packages for the practice. She stated that in 2013 her wages increased to €19.50 per hour.
9. The Appellant furnished two time sheets in support of hours worked and remuneration earned by Miss X in 2012 and 2013. These time sheets comprised two handwritten documents, each an A4 sheet, one titled *'[Miss X] 2012'* and the other titled *'[Miss X] 2013'*. The document in respect of 2012 showed a total gross earnings of €18,198 and the document in respect of 2013 showed a total gross earnings of €32,800 (with the Appellant accepting that the figure of 39,125 which had been heretofore deducted should in fact be €32,800 and that an amended Form P35 had been submitted on this basis). Each document



cited three lines of data with a total annual figure representing, it was submitted, gross income earned by Miss X in that particular tax year.

10. The Respondent submitted that the two A4 documents contained a negligible amount of information and did not contain an adequate record of the dates and times of Miss X's working arrangements. The Respondent submitted that these documents did not comprise objective evidence of Miss X's working hours.

Proof of payment

11. Previously, the Appellant demonstrated to the Respondent through bank records, that Employee Y was paid €20 per hour by electronic transfer. These wages were discharged from the Appellant's bank account on a weekly basis. Deductions in respect of these wages were not in issue in this case. In contrast, Miss X was paid, it was alleged, in cash. The Appellant did not provide an explanation for the difference in payment arrangements.
12. During the hearing the Appellant furnished bank statements in respect of 2012 and 2013 showing a series of intermittent lump sum withdrawals of cash in amounts from €500 to €5,000 which, it was submitted, were withdrawals to pay Miss X's cash wages. The 2012 statements contained narratives inserted by the bank at the request of the Appellant stating that the withdrawals related to '[Miss X's NAME SHORTENED]' '[Miss X's INITIALS]' and '[Miss X's NAME]'. The Appellant stated that the bank ceased the practice of inserting narratives by request in 2013 and he inserted handwritten narratives onto the bank statements thereafter identifying which withdrawals related to Miss X's wages. A withdrawal of €18,500 on 11 January 2013 was stated in the handwritten narrative to be '*loan wages to [Miss X]*'. The Appellant, when questioned about this under cross examination, stated that this was a mistake, that the withdrawal was not a loan to Miss X and that there was no loan made to her during these years. However, in respect of the other narrative notes contained on the bank statements, he submitted that these should be accepted as evidence of payment of wages to Miss X. The Respondent submitted that the



narratives inserted on the bank statements, having been inserted by the Appellant himself, fell far short of proof that the withdrawals related to the payment of Miss X's wages.

13. In evidence, Miss X stated that the cash paid to her in respect of her wages was stored in the family safe at her parents' family home where she lived. She did not receive payslips nor did she keep a personal log of her hours worked. When questioned as to why she did not lodge the cash in a bank account, she stated in evidence that she had never owned a bank account and that she did not trust banks. She stated that she always carried cash and had not previously owned or needed either ATM or credit cards. When asked whether she would be worried whether she might not have enough cash on her person on some occasion when she might need it, she stated that she never worried about this. When pressed, she admitted she had a credit union account but did not lodge the cash to this account as she did not trust credit unions and thus did not use the account. She said that she had opened a bank account very recently but that this was a departure for her.
14. The Respondent reiterated in legal submissions that taxpayers who carry on a trade or profession are statutorily obliged to retain proper books and records in accordance with section 886 TCA 1997. The Respondent submitted there was a lack of objective and independent evidence of actual payment of monies to Miss X as alleged by the Appellant and suggested that Miss X's evidence in relation to not using a bank account was lacking in credibility.

Miscellaneous

15. During the course of his evidence the Appellant stated that there had been bookkeeping problems in the practice and that he changed accountants three times in three years i.e. in 2012, 2013 and 2014. When challenged by the Respondent in relation to some of the figures in his accounts he responded by stating that he paid his accountant to do the figures and that therefore he was not in a position to explain all of the figures. One such example related to an accrual in the wages ledger in 2012 of €9,000 carried over into 2013, wherein the



Respondent suggested that this entry may have been indicative of an amount of wages remaining unpaid at the end of 2012.

Analysis

Hourly rate

16. As regards the rates of pay, Miss X earned €14.50 per hour in 2012 which increased to €19.50 per hour in 2013. As a point of comparison, in 2012 and 2013 the minimum wage for adult employees with at least two years experience was €8.65 per hour. The minimum wage for teenagers under 18 was €6.06. This increased after one year of employment over the age of 18 to the sum of €6.92 per hour and to €7.79 per hour where the employee had obtained two years of employment experience. I accept the submission made on behalf of the Respondent that MISS X's wages were overstated in terms of the hourly rate applied. I determine that a fair and reasonable hourly rate would be €9 per hour bearing in mind the minimum wage rates applicable during the relevant years of assessment in addition to the fact that Miss X had no qualifications at that time.

Working Hours

17. Miss X stated in evidence that she worked in the practice for 3 hours after school every day and full days on Saturdays. In 2013, Miss X sat her leaving certificate. She stated in evidence that she drove to [LOCATION AT DISTANCE] every day in 2013 as part of her employment, collecting and delivering packages for the practice. Based on the time sheets furnished as evidence by the Appellant, Miss. X worked 1,255 hours in 2012 (averaging at 24 hours per week for 52 weeks of the year) and 1,682 hours in 2013 (averaging 32 hours per week for 52 weeks of the year). Given that Ms. X attended school full time during these years I do not accept that Ms. X did or would have been able to work this quantity of hours. I note that the leaving certificate examinations in 2013 commenced on 5 June and finished on 21 June 2013, lasting two and a half weeks. As a result, I take the view that a reasonable amount of hours in which Miss. X may have been available to work to be 12 hours per week on average.



18. Based on an average 12 hour working week at a rate of €9 per hour for 50 weeks of the year (applying an assumption of two holiday weeks), Miss X's remuneration would amount to €5,400 in 2012 and based on a 12 hour average working week at a rate of €9 per hour for 47.5 weeks of the year (taking into account the leaving certificate examination and applying the assumption of two holiday weeks), Miss X's remuneration would amount to €5,130 in 2013.
19. I determine the total permissible deduction in respect of Miss X's wages to be €5,400 in respect of 2012 and €5,130 in 2013. Accordingly, for the reasons set out above, the assessments should be reduced to reflect allowable deductions in respect of wages in the sums of €5,400 in respect of 2012 and €5,130 in 2013.

Conclusion

20. In tax appeals before the Tax Appeal Commission, the burden of proof rests on the Appellant and the Appellant must prove his case on the balance of probabilities. The evidence presented by the Appellant in this case was insufficient to support the position contended for, namely, that deductions of approximately €18,198 in respect of the tax year of assessment 2012 and approximately €32,800 in respect the tax year of assessment 2013 were *'wholly and exclusively laid out or expended for the purposes of the trade or profession'* in accordance with s.81(2) TCA 1997.
21. The deficiency in records and documentation in proof of payment of Miss X's wages, in particular, the absence of weekly time sheets and payslips, prove disadvantageous for the Appellant in terms of the deduction claimed, in circumstances where he bears the burden of proof. I determine, based on the evidence heard and furnished and the reasons set out above, that a deduction is available albeit in a lesser amount than the Appellant contends. I determine an allowable deduction arises in respect of Miss X's wages, calculated as follows;
- In respect of 2012, based on a 12 hour average working week, at a rate of €9 per hour, for 50 weeks of the year, an allowable deduction arises in the sum of €5,400.





- In respect of 2013, based on a 12 hour average working week, at a rate of €9 per hour, for 47.5 weeks of the year, an allowable deduction arises in the sum of €5,130.

22. Thus the assessment dated 16 March 2015 re the tax year 2012 and the assessment dated 19 March 2015 re the tax year 2013 should be reduced in a manner which reflects allowable deductions of €5,400 and €5,130 respectively, in respect of Miss X's wages in the Appellant's practice.

23. Accordingly the appeal is determined in accordance with section 949AK TCA 1997.

APPEAL COMMISSIONER

July 2016

