



AC Ref: 16TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This case involves a hearing pursuant to section 933(1)(d)(iii) of the Taxes Consolidation Act 1997 as amended ("TCA 1997") to enable a determination regarding the issue of whether to allow an application for an appeal.
2. On [DATE REDACTED] 2015, assessments were raised in relation to relevant contracts tax ("RCT") for the tax years of assessment 2010 and 2011. The Appellant appealed the assessments by notice of appeal dated [DATE REDACTED] 2015. The Respondent refused the appeal on [DATE REDACTED] 2016 and the Appellant appealed the Respondent's refusal pursuant to section 933(1)(d)(iii) TCA 1997. The Appellant was formally excused from the appeal hearing in accordance with s.949AA TCA 1997.



Legislation

Section 933 Appeals against assessment

(a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as “other officer”) shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

(b) Where on an application under paragraph (a) the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.

(c) A person who has had an application under paragraph (a) refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.

(d) On receipt of an application under paragraph (c), the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under paragraph (b) and, on receipt of the copy of the notice, they shall as soon as possible-

refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal,

allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or



notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.

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S.I. No. 71 OF 2000 – Income Tax (Relevant contracts) Regulations 2000.

Regulation 14(4):

‘The provisions of the Act relating to appeals shall, with any necessary modifications, apply to claims and appeals under this Regulation as if those claims or appeals were appeals against an assessment to income tax. ‘

Submissions

3. This case involved assessments in respect of the tax years of assessment 2010 and 2011. The assessments were raised on the basis that the Appellant, a principal contractor, failed to deduct RCT from monies paid to subcontractors who were not in possession of C2 certificates during the relevant tax years of assessment.
4. On behalf of the Appellant it was accepted that RCT was due and payable on foot of the assessments but it was submitted that a dispute had arisen with the Respondent in relation to whether, if the tax was discharged by the Appellant, it would be available as a credit to the subcontractors. The Appellant stated that the Respondent had indicated that claims of the subcontractors for credit may be out of time in respect of 2010 and thus the Appellant’s position was that they were unwilling to discharge the tax due because of the unfairness to the subcontractors of not being able to claim credit. It was submitted by the Appellant that there would be no loss to the exchequer if the Respondent



agreed to credit the subcontractors for the relevant tax years in question (in the event the Appellant discharged the tax due) and the Appellant contended that the Respondent should clarify whether this credit would or would not be applied.

5. On behalf of the Respondent it was submitted that the appeal was refused because there were no stateable grounds of appeal. The Respondent pointed out that based on the Appellant's own submission, the tax was due and owing.

Analysis

6. The position in this s.933(1)(d)(iii) application is that the Appellant accepts in principle that the tax raised pursuant to the assessments dated [DATE REDACTED] 2015, is due and owing by them. The Appellant declined to discharge the tax on foot of a dispute with the Respondent regarding whether the RCT, once paid, would be applied towards tax liabilities of the subcontractors. The Appellant and the subcontractors are separate taxpayers with separate and distinct tax liabilities and obligations. The Appellant may not render discharge of their tax liabilities conditional upon a position to be adopted by the Respondent in relation to the tax affairs of another taxpayer.
7. This hearing is concerned with whether the Respondent was correct in law to refuse the appeal pursuant to s.933(1)(b) TCA 1997. On the basis that the Appellant accepts that the tax raised in the assessments is due and owing by them and on the basis that no stateable ground of appeal has been put forward by the Appellant in this Appeal, I determine that the Respondent was correct in law to refuse the appeal pursuant to s.933(1)(b) TCA 1997.



Conclusion

8. A hearing pursuant to section 933(1)(d)(iii) TCA 1997 is a hearing to enable the Tax Appeals Commission determine whether to allow the Appellant's application for an appeal. While section 933(1)(d) TCA 1997 is silent as to the criteria to be applied by the Commission in deciding an application thereunder, I am satisfied that to proceed to full hearing, the Appellant is required, *inter alia*, to demonstrate for the purposes of section 933(1)(d) that there is a *prima facie* stateable case to be heard and determined in the substantive appeal.
9. In this case the Appellant accepts that the tax raised in the assessments is due and owing by them. The Appellant's submission regarding the Respondent's possible approach to the affairs of another taxpayer does not constitute a stateable ground of appeal and does not merit that this appeal proceed to full, substantive hearing.
10. As a result, I determine that the Respondent was correct in law to refuse the appeal pursuant to section 933(1)(b) TCA 1997, and I refuse the application for appeal pursuant to s.933(1)(d) TCA 1997.

APPEAL COMMISSIONER

October 2016

