



**32TACD2017**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against a refusal of a tax clearance certificate pursuant to an application made in accordance with section 1095 of the Taxes Consolidation Act 1997, as amended ('TCA 1997').
2. The Appellant, trading as 'Trade X' carries on the business of the repair, servicing and sales of garden equipment. The Appellant applied for tax clearance on 18/2/2013, 8/3/2013, 18/6/2014, 12/8/2014 and 26/2/2015. All applications for clearance were refused. The refusal dated 2/3/2015 in relation to an application for clearance dated 26/2/2015 was appealed on 20/3/2015.

**Background**

3. A. Ltd (hereafter 'the company') carried on the trade of the retail, sale and servicing of grass maintenance equipment and parts together with the sale of motorbike accessories and parts. Mr. A was the principal shareholder in the company and is the spouse of the Appellant. In 2012, the company experienced financial difficulties and was unable to discharge its liabilities to the Respondent. A liquidator was appointed to the company in October 2012.

4. Trade X commenced trading in late 2012/early 2013, carrying on the business of the repair/servicing and sales of quad lawnmowers and garden equipment. The Appellant stated that her business was largely one of repair/servicing and that the business of the company was based more on sales of machinery with less emphasis on repairs/servicing. The Appellant submitted that the turnover of her business arose predominantly from repairs/servicing as opposed to the turnover of the company which was generated predominantly on foot of sales of machinery.
5. The Appellant complained of 'continual refusal' on behalf of the Respondent in relation to her applications for tax clearance. She stated that she had no indication how long the refusals would continue and that the resulting uncertainty compounded her frustration in relation to the process of seeking a tax clearance certificate.

### **Legislation**

6. The relevant statutory provisions are;
  - section 1095 TCA 97
  - section 10 TCA 97

These provisions are set out at **Appendix I** below.

### **Submissions**

7. The Respondent submitted that a person who applies for a tax clearance certificate can be refused a tax clearance certificate in circumstances where the taxpayer carried on a business or part of a business which was previously carried on by a company, where the company is a connected person and where that connected person was not in compliance with their obligations under the Taxes Acts in relation to the payment or remittance of taxes, interest and penalties and the delivery of returns.
8. While the Appellant accepted that she and the company were connected persons, she did not accept that she was carrying on the same business as the company or part of the business previously carried on by the company. The Appellant rejected the



contention that the company could be permanently in default of its obligations under s.1095(3) because of the liquidation.

### **Analysis and findings**

9. Section 1095(5) TCA 1997 provides that *'where a person who applies for a tax clearance certificate in accordance with subsection (3) (in this section referred to as "the first-mentioned person") carries on a business activity which was previously carried on by, or was previously carried on as part of a business activity by, another person (in this section referred to as "the second-mentioned person") and - the second-mentioned person is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up ... then, a tax clearance certificate shall not be issued by the Collector – General under subsection (3) to the first-mentioned person unless, in relation to that business activity, the second-mentioned person is in compliance with the obligations imposed on that person by the Acts in relation to the matters specified in paragraphs (a) and (b) of subsection (3).' [emphasis added]*
10. Based on s.1095(5), three matters arise for consideration, namely;
- i. Whether the Appellant was carrying on a business or part of a business which was previously carried on by the second-mentioned person (i.e. the company) and
  - ii. Whether the Appellant was connected to the company
  - iii. Whether, at the time of application for tax clearance, the company was in compliance with the obligations under s.1095(3) in relation to;
    - a) *... the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts, and*
    - b) *the delivery of any returns to be made under the Acts,...*
11. In relation to the question of whether the Appellant was carrying on a business or part of a business which was previously carried on by the company, the position is that both companies carried on the repair, servicing and sales of quad lawnmowers and garden equipment with the company generating more of its turnover from sales than servicing/repairs and with the additional aspect of sales of motorbike accessories and parts. Thus I am satisfied that the Appellant was carrying on a





business or part of a business which was previously carried on by the company. In relation to the matter of connected persons, the Appellant accepted that she and the company were connected persons in accordance with section 10 TCA 1997.

12. In relation to the question of whether the company was compliant with the requirements of s.1095(3) at the time the Appellant applied for tax clearance on 26/2/2015, the position is that on that date, the company was in default of its tax obligations and was in liquidation. By the time the appeal was heard in 2016, the company had exited the liquidation process and was dissolved. However, the parties at hearing remained focused on their differences in relation to the refusal of tax clearance dated 2/3/2015.

13. Subsequent to the appeal hearing in 2016, the Tax Appeals Commission issued a direction seeking further information in relation to which the Appellant sought an extension to January 2017, which was duly granted. Both parties filed further submissions citing the relevance of the fact that the company was dissolved on 9/8/2015, a date subsequent to the refusal of tax clearance dated 2/3/2015. The Respondent stated;

*'Revenue relies on S1095 for the purposes of granting tax clearance. Where a company's tax affairs are not in compliance with S1095(3) tax clearance is not granted. Such a position obtains until the company completes the liquidation process and is dissolved. Revenue has carried out a further review of the instant case and has established that the connected company was dissolved on 9 August 2015. Therefore, from that date [the Appellant] is entitled to apply for tax clearance without regard to s.1095(3).'*

14. By this statement, I understand the Respondent to indicate that the Appellant is entitled to apply for clearance without regard to s.1095(3), in relation to the affairs of the company, "the second-mentioned person" referred to in s.1095(5).

15. Some months post receipt of the Appellant's additional submissions in January 2017, the Commission wrote to both parties inquiring whether matters, the subject of the appeal, had been resolved as between them. The Respondent replied repeating its position that the Appellant was entitled to apply for a tax clearance certificate without regard to section 1095(3) TCA 1997 as the company was dissolved on 9/8/2015. The Respondent confirmed that no correspondence and no further application for tax





clearance had been received since the appeal hearing. The Appellant in reply, stated that the matter was not resolved and that a determination was required on the matter of the refusal of tax clearance dated 2/3/2015. As a result, the determination in this appeal relates specifically to the refusal dated 2/3/2015.

16. The Appellant applied for tax clearance on several occasions over the period February 2013 to February 2015. All applications were refused. On 26/2/2015 when the Appellant applied for clearance, the company had not yet completed the process of liquidation and was not yet dissolved. I accept the submission of the Respondent that on the date of application for tax clearance, the company was not in compliance with the payment or remittance of taxes in accordance with s.1095(3) TCA 1997. As a result, the Appellant was unable to satisfy the requirements of section 1095 TCA 1997 and the Respondent had no option but to refuse the Appellant's application for clearance.
17. However, the company was dissolved on 9/8/2015 and from that date, the matter of ineligibility for tax clearance for non-compliance by the company no longer arises. The Appellant is free to submit a new application for clearance which, if the Appellant meets all other qualification criteria, should be favourable to the Appellant.

### **Conclusion**

18. The application for clearance the subject of this appeal relates to an application which was submitted on 26/2/2015 at a time when the Appellant was carrying on a business activity or part of a business activity previously carried on by the company, in circumstances where the Appellant was also connected to the company. On that date, the company was not in compliance with s.1095(3) TCA 1997 and the Appellant was thereby ineligible for tax clearance in accordance with section 1095 TCA 1997.
19. I determine that the Respondent was obliged in accordance with s.1095 TCA 1997 to refuse the tax clearance certificate application dated 26/2/2015 as the Appellant did not meet the relevant qualifying criteria. However, since the application for clearance was refused on 2/3/2015 the liquidation process has concluded and the company has been dissolved. Thus the Appellant is now free to submit a new application for clearance which, if the Appellant meets all other s.1095 qualification criteria, should be favourable to the Appellant.





20. This appeal is hereby determined in accordance with s.949AL TCA 1997.

**APPEAL COMMISSIONER**

**December 2017**



## Appendix I

### Section 1095 TCA 1997 - Tax clearance certificates: general scheme

[(1) In this section—

["*the Acts*" means—

(a) the Customs Acts,

(b) the statutes relating to the duties of excise and to the management of those duties,

(c) the Tax Acts,

[(ca) Parts 18A, 18B, 18C and 18D,

(d) the Capital Gains Tax Acts,

(e) the Value-Added Tax Acts,

[(f) the Finance (Local Property Tax) Act 2012,]

[(g) the statutes relating to stamp duty and to the management of that duty,

(h) the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,]

and any instruments made thereunder;]

"*licence*" has the same meaning as in section 1094;

"tax clearance certificate" shall be construed in accordance with *subsection (3)*.

(2) The provisions of this section shall apply in relation to every application by a person to the Collector-General for a tax clearance certificate other than an application for such a certificate made—

(a) in relation to a licence, or

(b) pursuant to the requirements of—

(i) section 847A (inserted by the *Finance Act, 2002*),





(ii) the Standards in Public Office Act, 2001, or

(iii) Regulation 6 of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S.I. No. 135 of 1999).

(3) Subject to this section, where a person who is in compliance with the obligations imposed on the person by the Acts in relation to—

(a) the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts, and

(b) the delivery of any returns to be made under the Acts,

applies to the Collector-General in that behalf the Collector-General shall issue to the person a certificate (in this section referred to as a “tax clearance certificate”) stating that the person is in compliance with those obligations.

[(3A) Compliance with the obligations imposed on a person or persons referred to in *subsection (3)* may be reviewed from time to time by the Collector-General and a tax clearance certificate issued under *subsection (2)* may be rescinded by the Collector-General where those obligations are found at the time of review not to be complied with.]

(4) A tax clearance certificate shall not be issued to a person unless—

(a) that person and, in respect of the period of that person’s membership, any partnership of which that person is or was a partner,

(b) in a case where that person is a partnership, each partner, and

(c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 percent of the ordinary share capital of the company,

is in compliance with the obligations imposed on the person and each other person (including any partnership) by the Acts in relation to the matters specified in *paragraphs (a) and (b) of subsection (3)*.

(5) Where a person who applies for a tax clearance certificate in accordance with *subsection (3)* (in this section referred to as “the first-mentioned person”) carries on a business activity which was previously carried on by, or was previously carried on as part of a business activity by, another person (in this section referred to as “the second-mentioned person”) and—





(a) the second-mentioned person is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,

(b) the second-mentioned person is a company and the first-mentioned person is a partnership in which—

(i) a partner is or was able, or

(ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

(c) the second-mentioned person is a partnership and the first-mentioned person is a company in which—

(i) a partner is or was able, or

(ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued by the Collector – General under subsection (3) to the first-mentioned person unless, in relation to that business activity, the second-mentioned person is in compliance with the obligations imposed on that person by the Acts in relation to the matters specified in paragraphs (a) and (b) of subsection (3).

(6) *Subsections (5) [to (8)] of section 1094 shall apply to an application for a tax clearance certificate under this section as they apply to an application for a tax clearance certificate under that section.*



## Section 10 TCA 1997 – Connected persons

(1) In this section –

“*close company*” has the meaning assigned to it by Sections 430 and 431;

“*company*” has the same meaning as in Section 4(1);

“*control*” shall be construed in accordance with section 432;

“*relative*” means brother, sister, ancestor or lineal descendant and, for the purposes of the Capital Gains Tax Acts, also means uncle, aunt, niece or nephew;

“*settlement*” includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property;

“*settlor*”, in relation to a settlement, means any person by whom the settlement was made, and a person shall be deemed for the purposes of this section to have made a settlement if the person has made or entered into the settlement directly or indirectly and, in particular (but without prejudice to the generality of the preceding words), if the person has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the context otherwise requires, any question whether a person is connected with another person shall be determined in accordance with *subsections (3) to (8)* (any provision that one person is connected with another person being taken to mean that they are connected with one another).

(3) [A person shall be connected with an individual if that person is the individual’s husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual’s husband, wife or civil partner.]

(4) A person in the capacity as trustee of a settlement shall be connected with –

(a) any individual who in relation to the settlement is a settlor,

(b) any person connected with such an individual, and



(c) a body corporate which is deemed to be connected with that settlement, and a body corporate shall be deemed to be connected with a settlement in any accounting period or, as the case may be, year of assessment if, at any time in that period or year, as the case may be, it is a close company (or only not a close company because it is not resident in the State) and the participators then include the trustees of or a beneficiary under the settlement.

(5) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person shall be connected with any person with whom such person is in partnership, and with the spouse [or civil partner] a relative of any individual with whom such person is in partnership.

(6) A company shall be connected with another company –

(a) if the same person has control of both companies, or a person (in this paragraph referred to as “*the first-mentioned person*”) has control of one company and persons connected with the first-mentioned person, or the first-mentioned person and persons connected with the first-mentioned person, have control of the other company, or

(b) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom such member is connected.

(7) A company shall be connected with another person if that person has control of the company or if that person and persons connected with that person together have control of the company.

(8) Any 2 or more persons acting together to secure or exercise control of, or to acquire a holding in, a company shall be treated in relation to that company as connected with one another and with any person acting on the direction of any of them to secure or exercise control of, or to acquire a holding in, the company.

