



02TACD2020

BETWEEN/

Appellant

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a refusal by the Respondent to grant Seafarer Allowance to the Appellant for the years 2012-2015.
2. This appeal, with the agreement of the parties, is being held without a hearing, under Section 949U Taxes Consolidation Act 1997 (TCA 1997)

Background

3. The Appellant is a fully qualified **redacted**.
4. He worked on board the Irish **redacted** vessel known as the 'XYZ' for the years 2012-2015
5. The 'XYZ' is owned by **redacted**, and operated by the **redacted**.
6. The 'XYZ' is managed and staffed by B Ltd.

7. The vessel travels/operates in domestic and international water carrying marine researchers. It is registered in the port of W.
8. The 'XYZ' holds passenger and cargo certification issued by the Department of Transport.
9. The 'XYZ' carries cargo and passengers to offshore sites where the vessel becomes an offshore scientific platform where scientific research is carried out.

Legislation

10. Section 472B of the Taxes Consolidation Act (hereafter TCA)1997 as set out in Appendix 1 provides a relief from income tax known as the Seafarer Allowance.
11. The relief where available provides for an entitlement to a tax deduction in the amount of € 6,350.
12. The relief applies where an individual spends at least 161 days absent from the State for the purposes of performing duties of a qualifying employment.
13. A qualifying employment is *'an employment being an employment to which this section applies, the duties of which are performed wholly on board a sea-going ship on an international voyage.'*
14. A seagoing ship is defined as *'a ship which-*
(a) is registered in the Member's State Register,
(b) and is used solely for the trade of carrying passengers or cargo for reward.
15. An international voyage is defined as *'a voyage beginning or ending in a port outside the State'*



16. A port outside the State will be deemed to include *‘a mobile or fixed rig, platform or installation of any kind in any maritime area.’*

Appellant’s Submissions

17. The Appellant contends he is entitled to Seafarer Allowance in respect of his employment with B Ltd (hereafter B) which employs the Appellant as **redacted**.
18. The Appellant challenges the reliance placed by the Respondent on the description of the XYZ’s activities on the B’s website and asserts that the description does not reflect the activities comprising the carriage of goods and passengers. He points out that the vessel has a licence to carry passengers and cargo.
19. The Appellant refutes the Respondents assertion that the ‘XYZ’ is not suitable for the carriage of goods or passengers.
20. The Appellant accepts that the vessel may be used for research purposes but contends that the primary activity is the carriage of goods and passengers for that purpose.
21. The Appellant submits that the ‘XYZ’ becomes an offshore platform when it reaches a survey site and as such comes within the definition of a port outside the State. The Respondent has not refuted this contention but says it is of the view that the Appellant does not begin a journey there as he is already on board the vessel and does not embark or disembark. The Appellant argues that in some instances he does disembark.
22. The Appellant argues that the Respondent has misclassified certain voyages as domestic and he contends that as the ‘XYZ’ works exclusively outside the Irish 12-mile limit making the voyages international. The Respondent has not commented in relation to the 12- mile limit.
23. The Appellant contends the Respondent has misread the Discharge Book in that they have not recognised voyages to foreign ports where the vessel stops to carry out research work and where the vessel becomes a foreign port. He cites an example where the Respondent has not treated a W to W voyage as an international voyage notwithstanding that the vessel might have hypothetically stopped 20 times.

24. The Appellant disputes the Respondent's calculations of days for the purpose of counting days on international voyages. He states they have miscalculated the days for 2015 as they have misclassified voyages from W to Z (outside Ireland) and from Z to W as domestic. Furthermore, he argues that 2 other international voyages have been disregarded being the voyages Z to offshore work platform and from offshore platform to Z. He contends that the Seaman's Discharge book is a legal document and is an official copy of the Ship's Logbook.
25. The Appellant contends that under International Ship and Ports Security (ISPS) rules when docked in an ISPS port such as W a vessel is still classed as being at sea akin to flight transfers in an airport. He contends that the 'XYZ' is only allowed to dock in ISPS ports.
26. The Appellant submits he spends over 200 days at sea on an annual basis and that he is entitled to the relief in s 472B.

Respondent's Submissions

27. The Respondent has refused the relief on the grounds below;
- The 'XYZ' is not a sea-going ship
 - The Appellant does not have a qualifying employment
 - The Appellant has not spent 161 days absent from the State on international voyages.
28. The 3 conditions as listed above are mandatory statutory conditions.
29. The Respondent accepts that B, the Appellant's employer, generally carries on the trade of transporting passengers or cargo for reward. However, it contends that the activities of the 'XYZ' do not amount to a trade of carrying passengers or cargo for reward as the activities involve the Appellant's employer in ship management operations and maintenance services. The vessel is used primarily for research purposes. Furthermore, they contend that the vessel is not used solely (emphasis added) for the purpose of carrying passengers or cargo for reward as required under section 472B.

30. The Respondent submits that the Appellant does not have a qualifying employment, as to constitute a qualifying employment the duties must be performed wholly on board a sea-going vessel on an international voyage.
31. The Respondent has reviewed the Seafarer's Record Book and they have calculated 72 days were spent by the Appellant outside the State on international voyages in 2015. They have not calculated the days for the other tax years in question as they do not consider the Appellant qualifies for the relief.
32. The Respondent accepts the terminology used in Merchant Shipping legislation differs from that used in S.472B but contends that to prove his entitlement to the relief the Appellant must prove compliance with the terminology used in S.472.

Analysis and findings

33. I find the Appellant has not produced enough evidence to support his contention that the 'XYZ' is a sea- going vessel "*carrying on the trade of carrying by sea passengers or cargo for reward*". The appellant has not produced evidence, for example, facts relevant to the establishment of a trade in accordance with the 'Badges of Trade' i.e. the typical indicia used to determine the existence of a trade. For example, no mention has been made by the Appellant of any "reward" received by the operators of the ship for the carrying by sea of passengers or cargo.
34. The suitability of the 'XYZ' for use as a cargo or passenger ship as raised by the Appellant is not relevant to this determination.
35. I accept that the Respondent's reliance on the statement on the B's website is not conclusive as to the nature of the activities of the 'XYZ'. However, the Appellant has conceded that the vessel may be used for research purposes. He states that the ship is primarily (emphasis added) used for the carriage of passengers and cargo. Hence, I am unable to find that it is used solely for the carriage by sea of cargo or passengers for reward.
36. As the 'XYZ' is not a sea-going vessel, as defined, I find that the conditions in relation to a qualifying employment are not met as a qualifying employment is one where 'the

duties are performed wholly on board a sea-going ship (emphasis added) on an international voyage.'

37. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemption, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.
38. In the High Court case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at par.22 Charleton J. stated:
'The burden of proof in this appeals 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. Having considered the facts and evidence and the relevant legislation, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal in relation to the issues as to whether the 'XYZ' was a seagoing vessel, as defined, and whether he had a qualifying employment.
40. As the conditions in Section 472A are mandatory and the Appellant has failed to establish compliance with the requirement to have a qualifying employment aboard a sea-going ship, he is not entitled to the relief provided by the section.
41. I have considered the Appellants argument that the Respondent has miscalculated the number of international voyages on a number of grounds. For example, he contends that the Respondent has not recognised that a foreign port includes '*a mobile or fixed rig, platform of installation of any kind in any area*'. The Respondent in its Statement of Case does not dispute the fact that 'XYZ' when it reached a survey site becomes an offshore platform, rather they contend voyages do not begin or end there due to the fact that the Appellant is already on board when the ship reaches the survey site, and, due to the fact he neither embarks or disembarks at this point.
42. The Appellant also asserts that the Respondent has miscalculated the number of days spent outside the State on international voyages as the Respondent as has ignored voyages outside the 12-mile limit (which he contends the Respondent classes as being outside the State).



43. He also submits that the Respondent has misread the Seaman's Discharge Book and has over relied on and misread information in the voyage schedule.
44. However, as the Appellant otherwise does not meet the criteria for relief, I do not need to make a determination on the number of international voyage days within the year spent by the Appellant.
45. I have not considered the Merchant Shipping legislation and the ISDS rules referred to by the Appellant as S. 472 B provides very specific definitions in relation to the entitlement the Sea Farer Allowance.

Conclusion

46. I determine that the Appellant has not succeeded in establishing an entitlement for the years 2012-2015 to the Seafarer Allowance pursuant to Section 472B. I uphold the decision of the Respondent refusing the Seafarer Allowance.

The appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

5 December 2019

Appendix 1

Section 472B Seafarer Allowance

[(1) In this section –

“authorised officer” has the same meaning as in section 818;

“employment” means an office or employment of profit such that any emoluments of the office or employment of profit are to be charged to tax under Schedule D or Schedule E;

“international voyage” means a voyage beginning or ending in a port outside the State;

“Member State” means a member state of the European Communities;

“Member State’s Register” shall be construed in accordance with the Annex to the Official Journal of the European Communities (No. C205) of the 5th day of July, 1997;

“qualifying employment” means an employment, being an employment to which this section applies, the duties of which are performed wholly on board a sea-going ship on an international voyage;

“qualifying individual” means an individual who –

(a) holds a qualifying employment, and

(b) has entered into an agreement (known as *“articles of agreement”*) with the master of that ship;

“sea-going ship” means a ship which –

(a) is registered in a Member State’s Register, and

(b) is used solely for the trade of carrying by sea passengers or cargo for reward,
but does not include a fishing vessel.

(2) For the purposes of this section –

(a) an individual shall be deemed to be absent from the State for a day if the individual is absent from the State at the end of the day, and

[(b) a port outside the State shall be deemed to include a mobile or fixed rig, platform or installation of any kind in any maritime area.]

(3)(a) Subject to *paragraph (b)*, this section shall apply to an employment other than –

- (i) an employment the emoluments of which are paid out of the revenue of the State, or
- (ii) an employment with any board, authority or other similar body established in the State by or under statute.

(b) This section shall not apply in any case where the income from an employment –

- (i) is chargeable to tax in accordance with section 71(3), or
- (ii) is income to which section 822 applies.

(4) Where for any year of assessment an individual resident in the State makes a claim in that behalf to an authorised officer and satisfies that officer that he or she is a qualifying individual and that he or she was absent from the State for at least 169 days, or such greater number of days as the Minister for Finance, after consultation with the Minister for the Marine and Natural Resources, may from time to time, by order made for the purposes of this subsection, substitute for that number of days (or, as the case may be, for the number of days substituted by the last previous order under this subsection), in that year for the purposes of performing the duties of a qualifying employment, he or she shall be entitled, in computing the amount of his or her taxable income, to have a deduction of €6,350 made from so much, if any, of his or her total income as is attributable to the income, profits or gains from the qualifying employment.

[(4A) (a) Notwithstanding *subsection (4)*, but subject to *paragraph (b)* –

- (i) as respects the year of assessment 2001, the reference in that subsection to “125 days” shall be construed as a reference to “119 days”, and
- (ii) as respects the year of assessment 2002 and subsequent years of assessment, the reference in that subsection to “169 days” shall be construed as a reference to “161 days”.

(b) *Paragraph (a)* shall come into operation on such day as the Minister for Finance may by order appoint.]

(5) Where, for a year of assessment, an individual claims a deduction under this section, he or she shall not be entitled to a deduction under section 823.

(6) For the purposes of the definition of '*qualifying employment*' in this section, any duties of the employment not performed on board a sea-going ship on an international voyage, the performance of which is merely incidental to the performance of the duties of the employment on board a sea-going ship on an international voyage, shall be treated for the purposes of that definition as having been performed on board the sea-going ship.]