



**69TACD2020**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

## **DETERMINATION**

### **Introduction**

1. This is an appeal primarily related to two taxation issues.
2. Firstly, this is an appeal against an assessment to tax for years **Year 1** and **Year 2**, issued by the Respondent in respect of employment remuneration received by the Appellant.
3. Secondly, this is an appeal pursuant to Taxes Consolidation Act 1997, section 997A (8) against a decision of the Respondent to deny a credit for PAYE deducted from the Appellant's emoluments but not remitted to the Respondent by the Company in which the Appellant held a material interest.
4. The potential impact of the Company's Examinership, under the Companies (Amendment) Act 1990 (CAA 1990), on these two taxation issues, is relevant to this appeal.
5. This appeal is adjudicated with a hearing in accordance with Chapter 4 Part 40A of the Taxes Consolidation Act, 1997.

### **Background**



6. The Appellant was a director of and held a 50% shareholding in REDACTED (The Company). The Company was a REDACTED, that traded under the name REDACTED; REDACTED.

The Company encountered trading difficulties in Year1 and Year 2. In Year3, the Company sought protection from the Courts and entered Examinership.

7. In Year 3, by order of the High Court a scheme of arrangement (the “proposals”), submitted by the Examiner to facilitate the continued viability of the Company, was given legal effect from Scheme date Year 3.
8. A Revenue audit was commenced on REDACTED, the Appellant, and the Company. During the audit the following were identified by the Respondent:

- According to the Company’s PAYE returns, the Appellant’s employment income from the Company for the years under appeal was:

Year 1: €36,895

Year 2: €27,285

- A weekly lodgement of €1,000 by bank standing order was made from the Company to the Appellant. This totalled €52,000 in both years Year1 & Year 2.
  - A credit for PAYE paid (including USC) had been claimed in the Appellant’s income tax returns for both years but the PAYE had not been fully paid over to Revenue by the Company.
  - Based on the apportionment rules set out in section 997A TCA1997, in Year1, the PAYE relating to the Appellant’s reported employment income (per the Company’s P35 Returns) was deemed partially paid to Revenue by the Company, while in Year2, none of the PAYE relating to the Appellant’s reported employment income was paid or deemed paid to Revenue.
9. Arising from the audit, the Respondent raised amended income tax assessments on REDACTED for the years Year1 & Year 2 on 19<sup>th</sup> November Year 6. The Respondent’s view was that these liabilities arose due to the denial of credits for PAYE deducted at source but not paid over to Revenue and due to an increase in the Appellant’s assessable



annual employment income up to €52,000 (paid to Appellant by the Company in weekly standing orders of €1000).

An amended assessment was raised for **Year 1** in the amount of €11,974, and for **Year 2** an amount of €16,005 was assessed.

10. A notice of appeal was received by the Tax Appeals Commission from the Appellant on 19/12/**Year 6**.

## 11. Legislation

The relevant legislative provisions are as follows:

- Section 19 Taxes Consolidation Act 1997 (as amended) which imposes a charge to tax under Schedule E in regard to any office or employment.
- Section 112 of the TCA 1997 which sets out the Schedule E charge to tax:

*“on every person having or exercising an office or employment of profit mentioned in that Schedule,...., in respect of all salaries, fees, wages, perquisites or profits whatever therefrom”.*

- The provisions of Chapter 4 of Part 42 TCA 1997 and by The Income Tax (Employments) (Consolidated) Regulations 2001 and which places an obligation on an employer to deduct Schedule E tax under the PAYE system and the tax due on such remuneration is due and payable to the Revenue Commissioners.
- Section 983 TCA 1997 which defines emoluments as:

*“...anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments”.*

- Section 984 TCA 1997 which applies the PAYE system to all emoluments, and Section 985 TCA 1997 which states:



*“... On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this Chapter, be deducted or repaid by the person making the payment...”*

- Section 984B TCA 1997 causes the obligation on the Company to operate PAYE on the Appellant’s earnings to be a debt of the Company. It reads:

*“ A person who is required to make any deduction or repayment referred to in this Chapter, or regulation made under this Chapter, shall, in the case of a deduction, whether or not made), be accountable for the amount of the tax, and liable to pay that amount, to the Revenue Commissioners..”*

- Section 986 TCA 1997 states:

*“...The Revenue Commissioners shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Chapter applies...”*

- The Income Tax (Employment) (Consolidated) Regulations 2001, more commonly known as the PAYE Regulations, require the following:
  - Under Regulation 2, “employee” means any person in receipt of emoluments. This means that, for the purpose of the operation of PAYE, an employee includes an office holder such as a director of a company.
  - Under Regulation 28 (Payment of tax by employer), an employer is liable to remit to the Collector General all amounts of tax that the employer is liable under these Regulations to deduct from emoluments paid by him or her during that income tax month from emoluments paid.
  - Under Regulation 31 (Return by employer at end of year), within 46 days from the end of the year, the employer is obliged to send to the Collector General a return in respect of each employee showing the total amounts of emoluments (this return is made on a form prescribed by the Revenue Commissioners and is more commonly known as the form P35).



- Section 531A(3) TCA 1997 (application of PAYE Regulations to USC)
- Section 531AAA TCA 1997 (application of PAYE Regulations to USC)
- Section 997A TCA 1997 – Credit in respect of tax deducted from emoluments of certain directors (See Appendix 1).
- Finance Act 2005 inserted section 997A into the Taxes Consolidation Act 1997. Section 997A(3) denies a credit for tax deducted from the emoluments paid to certain directors and employees, unless there is documentary evidence that confirms that the tax deducted from those emoluments was remitted to the Collector-General.
- Section 24 of the Companies (Amendment) Act, 1990 ('CAA 1990') - Confirmation of (Examinership) proposals

*(1) The report of the examiner under section 18 shall be set down for consideration by the court as soon as may be after receipt of the report by the court.*

...

*(6) Where the court confirms proposals (with or without modification), the proposals shall, notwithstanding any other enactment, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the proposals in respect of any claim or claims against the company and any person other than the company who, under any statute, enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.*

## **Submissions**

12. The Respondent asserts that the issue in this appeal is the liability of the Appellant to assessments raised in respect of income tax years **Year1 & Year 2**, arising from two specific issues, viz.,

- Undeclared income received from the Company.



- Denial of credit for PAYE deducted at source but not paid to Revenue by the Company in accordance with Section 997A TCA 1997.

Undeclared income received from The Company:

13. According to the Respondent the taxpayer was in receipt of a weekly amount of €1,000 by standing order from the Company which was not fully declared on his income tax returns. Income declared on the Appellant's Form 11 for these years was €36,895 & €27,285 respectively, which was lower than the aggregate €52,000 per annum payments (€1,000 per week by standing order) paid by the Company in both years.

According to the Respondent, they had requested information relating to directors' loan accounts during the audit. No evidence of the directors' loan accounts was given to Revenue and no amounts or information pertaining to movements from any previous balances in the directors' loan accounts, were returned on the statutory accounts.

14. The Appellant submitted as follows:

*"in making its amended assessments, the Revenue Commissioners did not take account of monies paid by me to the Company during the relevant periods.*

*During the course of the audit, I gave all my bank statements to the Revenue Commissioners on request, and was asked to account for various lodgements, which I did. I was not asked to provide information about monies paid by me to REDACTED, and I contend that these should have been accounted for in making any assessment."*

15. The Appellant, in evidence, also stated that by Year 6 he did not have access to any books or records of the Company, as, by then, he had resigned from the Company and had sold his shares by the end of Year 3.

Disallowance of PAYE tax credit as per section 997A of the TCA:



16. As the taxpayer owned more than 15% of the shares in the Company, the Respondent argued that he was a proprietary director and therefore under the provisions of section 997A (3) TCA 1997 the amount of PAYE tax deducted from emoluments paid to him by the Company, but which had not been paid over to Revenue, should be excluded as a tax credit in the tax assessments for each of the years, **Year1 & Year 2**.

The denial of the credit for PAYE in accordance with S 997A TCA 1997, results in a tax liability being due by the Appellant per the tax assessments.

The Respondent is of the view that the tax situation of the Company is distinct from the affairs of the director/ Appellant himself, and although the Company's obligations to pay over the PAYE liability might change in the proposals arising from the Examinership, there is no change in the Appellant's personal tax position.

17. The Appellant argues that the Company, in which he was a director and employee, went through a successful Examinership process in **Year 3** and through proposals, approved by the High Court and agreed to by the creditors, which included the Revenue Commissioners, a dividend was paid in full and final settlement of all debt, including Revenue's debt.
18. Pursuant to the proposals approved by the High Court in the Examinership of the Company, the Respondent, as a preferential creditor, received **<10%** in full and final settlement of the preferential creditor claims in relation to outstanding VAT and PAYE liabilities. The outstanding liabilities were written down accordingly and payment was made to the Respondent in the reduced amounts as per the terms of the Examinership proposals.
19. Income tax returns were filed for the years **Year1 & Year 2** by the Appellant claiming a credit for the full amount of tax deducted by the Company in respect of the emoluments paid to the Appellant.
20. On 19 November **Year 6**, the Respondent raised amended assessments on the Appellant for the years **Year1 & Year 2** limiting the credit for the income tax deducted from the Appellant's emolument. This limit was calculated with reference to the amount remitted to the Respondent by the Company on behalf of the Appellant pursuant to section 997A



(3) TCA 1997 and gave rise to a personal liability on the Appellant in the amounts of €11,974 and €16,005 for the years **Year1 & Year 2** respectively.

21. The Appellant, being a 50% shareholder in the company, did not dispute that he was a person with a '*material interest*' in the company in accordance with section 997A TCA 1997. He accepted that the Company had failed to remit certain taxes in relation to his emoluments in respect of the tax years of assessment **Year 1** and **Year 2**.
22. However, the Appellant's contends that the PAYE debts had been written off in the Examinership process and that recovery from him, personally, by virtue of the operation of section 997A TCA 1997, was thus precluded.
23. The Respondent submitted that Section 997A TCA 1997 is clear and unambiguous in its denial of a credit for tax deducted under PAYE in the circumstances pertaining to the Appellant.
24. The Respondent cited a number of previous decisions of the Tax Appeals Commission relating to the operation of section 997A TCA1997. The Appellant argued that those decisions should be distinguished from this appeal as none were considered in the context of an Examinership and Court approved proposals.

### **Analysis**

25. The main argument put forward by the Appellant is that the High Court Examinership effectively resolved all liabilities of the Appellant and his Company. Therefore, it is necessary to review the terms of the High Court ruling.

### Examinership and the Taxes Consolidation Act 1997

26. Examinership is a procedure provided for under the Companies Acts to aid the return to health of a viable but ailing company. Its applicability is reflected well in the facts of this case where the Company continued to trade throughout the period of Examinership and subsequently continued for a period as a going concern after exiting the process. The Examinership proposals binds the company and binds the creditors of that Company to accept the proposals at a Fixed Date (**Scheme date Year 3**) when the company entered Examinership. This date represents the cut-off point in relation to the prepetition





financial position. The proposals were confirmed by Order of the Court on **Year3**. That Order provides *inter alia* as follows:

*On **Year3** , by order of the High Court, **REDACTED**, in the matter of **REDACTED** (under the protection of the Court), the Scheme of Arrangement (The Proposals) put forward by the Examiner, **REDACTED** in the matter of **REDACTED** in Examination ( under the Companies (Amendment) Act 1990 (The Company) were given effect. In giving its orders, it was noted by the High Court that the Revenue Commissioners opposed the Scheme of Arrangement.*

- Clause **REDACTED** of the proposals states:

*“These proposals cover all of the Company’s liabilities including without prejudice to the generality of the foregoing, contingent and prospective liabilities at the Fixed Date...”*

- Under definitions within the Proposals, the Revenue Commissioners were classified as “**REDACTED** Creditor” in respect of employees’ PRSI deductions.
- Under definitions within the Proposals, the Revenue Commissioners were classified as “*Preferential Creditor*” in respect of other tax liabilities.
- Under Clause **REDACTED** the **REDACTED** creditor was to be paid 100% of the debt due to it.
- Under **REDACTED** the Preferential Creditors were to be paid **<10%** of the debts due to it, with a right to further contingent dividends.
- Under Clause **REDACTED**:

*“The Preferential Creditor shall waive any and all rights and claims of any description whatsoever, subrogated or otherwise, they may have against the Company, howsoever arising including without limitation arising out of any agreements entered into with the Company or otherwise howsoever...”*



- Under REDACTED headed “Waiving of Creditor Rights” it states:

*“With effect from the Fixed Date, no Creditor or any other party shall have any right or claim of any description whatsoever against the Company arising out of or connected with any contract, engagement, circumstance, event, act or omission of the Company to the Creditors prior to the Fixed Date (Scheme date Year 3), save as provided in the Proposals.*

*The payments to creditors provided herein pursuant to an order of the Court confirming the proposals shall be in full and final settlement of all obligations of the Company to the Creditors, as determined in accordance with these proposals” [emphasis added].*

27. The Appellant contends that the proposals approved by the High Court precludes the Respondent from levying income tax on the income of the Appellant that relates to the PAYE debts written down in the Examinership. The Appellant, in effect, contends that it is a feature of examinership that any debts which have been written down, cannot be resurrected at a later date. The Appellant submitted, in effect, that if the Respondent were entitled to recover in the manner sought (via raising assessments in Year 6 in respect of Year 1 and Year 2 and refusing the Appellant PAYE credit) it would defeat the proposals. This, in effect, would allow the Respondent, as a creditor, to recover its debts post the implementation of the Examinership proposals and contrary to the terms of those proposals.

28. The Respondent submitted, in effect, that the Appellant was conflating the position of the Respondent as a creditor of the Company (bound in that capacity under the proposals) and the Respondent in its capacity as the statutory authority with powers to assess, levy and collect tax from a director of the Company, who is a separate person from the Company.

The Respondent, in effect, submitted that the Revenue Commissioners, in raising assessments was not acting *qua creditor* in the examinership (i.e. it was not relying on any of the rights it would have had as a creditor of the Appellants in the examinership scheme). The Respondent submitted that in raising assessments it was simply operating



pursuant to the TCA 1997 provisions in accordance with its statutory duties and obligations.

29. The Appellant submitted, in effect, that the Respondent, having had their debt written down pursuant to the Examinership process, is prohibited by the Companies Acts from recovering the same debts by way of assessments on the Appellant.
30. In this regard, section 24 Companies (Amendment) Act, 1990 and in particular the stipulation contained at section 24(6) that the proposals shall be binding *'notwithstanding any other enactment'* needs examination.

Section 24(6) CAA1990 provides:

*'Where the court confirms proposals (with or without modification), the proposals shall, notwithstanding any other enactment, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the proposals in respect of any claim or claims against the company and any person other than the company who, under any statute, enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.'* [emphasis added].

31. If there is a conflict between the CAA 1990 and the Taxes Act, which provision should prevail, given the wording of section 24(6) (in particular the words "*notwithstanding any other enactment*")?
32. In *Revenue Commissioners -v- Droog* [2011] IEHC 142, a High Court judgement delivered by Laffoy J considered the expression "notwithstanding any other provision of the Acts" in the following terms:

*"The primacy quality which the expression "notwithstanding any other provision of the Acts" in s. 811(5)(a) is intended to have, in my view, is nugatory in effect when set up against the primacy quality attached to the provisions of Part 41 by virtue of s. 950(2), which the Oireachtas intended should subsist unless expressly disapplied. To put it another way, in my view, the expression "notwithstanding any other provision of the Acts" in s. 811(5)(a) does not neutralise the*



*corresponding provision in s. 950(2), which can only be neutralised by an express statutory provision”.*

33. Section 997A (3) states:

*“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 ... (emphasis added)*

This confines the “*the primacy quality*” of section 997A to the Taxes Acts.

34. Because section 24(6) CAA 1990 provides:

*‘...the proposals shall, notwithstanding any other enactment, be binding on all the creditors .... affected by the proposals in respect of any claim or claims against the company...’ (emphasis added)*

it seems to me, section 997A TCA1997 is “nugatory in effect when set up against the primacy quality attached” to section 24(6) CAA1990.

35. In order to invoke the words ‘*notwithstanding any other enactment...*’, there must be some suggestion that the Examinership proposals have become compromised or in some way, less than binding by reason of that other enactment. In this case, under Examinership, the PAYE debt (as it relates to the Appellant) was agreed and adhered to by the creditors including the Respondent, who accepted lesser sums as a result. If the Respondent post examinership, raises assessment on the Appellant to collect the PAYE debt written off under examinership, then to my mind, this contravenes the explicit wording of section 24(6) CAA 1990. Such action does make the Examinership proposals less binding in my view. The Respondent is a statutory body authorised and obliged to assess and collect taxes pursuant to the provisions of the Taxes Consolidation Act 1997. The exercise of this statutory function cannot be allowed to render the Examinership proposals non-binding.

36. Section 984B TCA1997 causes the obligation on the Company to operate PAYE on the Appellant’s earnings be a debt of the Company. It reads:



*“A person who is required to make any deduction or repayment referred to in this Chapter, or regulation made under this Chapter, shall, in the case of a deduction, (whether or not made), be accountable for the amount of the tax, and liable to pay that amount, to the Revenue Commissioners...”*

37. In my view, the following wording within section 24 of the Companies (Amendment) Act, 1990 ('CAA 1990')

*“any person other than the company who, under any statute, enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.”*

can be read as

*“any person other than the company (such as the Appellant) who, under any (taxing) statute, enactment, rule of law or otherwise, is liable for all or any part of the (PAYE) debts of the company.”*

38. For this reason, I determine that within this appeal section 24(6) CAA 1990 does override the provisions of the TCA 1997 even if the latter legislation, on its own, might otherwise allow or oblige the Respondent to raise an assessment on the Appellant.

39. Article 28 of the Income Tax (Employment) (consolidated) Regulations, 2001 sets out the rules relating to the payment and recovery of PAYE. Paragraphs (3) and (4) address the situation where the amount which the employer is liable to remit to the Collector General exceeds the amount of the total net tax deducted in relation to emoluments actually paid by the employer to the Revenue. This is similar to the situation in the within appeal.

40. Paragraph, (3) deals with the situation where the employer took reasonable care to comply with the PAYE regulations and paragraph (4) deals with the situation where the employee has received his/her emoluments knowing that the employer has willfully failed to either deduct tax or remit tax due to the Revenue. Both paragraphs, allow the amount of the excess to be recovered from the employee and the *“employer shall not be liable to remit the amount of the excess to the Collector-General”*.



41. However, to allow the Revenue Commissioners to “direct that the amount of the excess shall be recovered from the employee” there is a requirement that the Revenue Commissioners, in the case of paragraph (3) “being satisfied that the employer took reasonable steps to comply...” or in the case of paragraph (4) that the Revenue Commissioners “*are of the opinion that an employee has received his or her emoluments knowing that the employer has willfully failed to either deduct... or to remit*” the tax, and that the Revenue Commissioners “*may direct that the amount of the excess shall be recovered from the employee...*”
42. In this Appeal, paragraph (3) would not apply. If paragraph (4) were to apply, it would have been necessary for the Revenue Commissioners, before the Fixed Date within the Examinership of **Scheme date Year 3** to be of “*the opinion that an employee has received his or her emoluments knowing that the employer has willfully failed to either deduct... or to remit*” the tax, and to have directed “*that the amount of the excess shall be recovered from the employee...*”. This did not happen, so the opportunity under the PAYE regulations to recover the unpaid tax from the Appellant as an employee of the Company, expired with the Examinership.
43. This means that the Respondent is not entitled to raise the assessments for **Year1** and **Year 2** which have the effect of defeating the High Court approved proposals. Accordingly, there is no need to explore the operation of section 997A TCA 1997 because without the assessments there is no need to bring that section into play.
44. The demonstrable effect of section 997A TCA1997 is to deny persons in positions of control and influence over a company’s business activities, the ability to claim a credit for unpaid taxes that ought to have been deducted and remitted by such company to the Respondent. Because the assessments cannot be raised there is no need for the Appellant to seek a credit for PAYE (deemed) paid by the Company and no need for the Respondent to seek to deny credit under section 997A TCA1997.
45. The next issue to be considered is whether the Respondent may raise additional assessments on the Appellant for **Year 1 and Year 2** in respect of the difference between €52,000 (the Respondent’s estimate of actual salary paid to the Appellant from the



Company) and €36,895 for **Year 1** and the difference between €52,000 and €27,285 for **Year 2**.

46. The amount of €52,000 for both years is based on the monthly payments to the Appellant by the Company in the years in question. In his submissions the Appellant referred to these payments as salary. However, in sworn evidence at the hearing the Appellant said this was an error on his part and that the payments were in part drawings (i.e. not all salary).
47. On the issue of whether any amounts paid to the Appellant by the Company, were anything other than remuneration, it was confirmed by the Respondent at the hearing that in the years **Year 1** and **Year 2**, the directors (the Appellant and his fellow 50% shareholder / director) were owed considerable amounts of money. However, the Respondent could not reconcile the Appellant's assertion that these monies (€52,000 p.a.) were booked to the directors' loan accounts (and that the payments of €52,000 were, in part, refunds of monies owing to the Appellant within the directors' loan account), with the evidence of the Appellant's personal bank account, showing monies being paid to the Company.
48. If the Respondent is correct that the Appellant was paid salary in excess of the amounts shown in his tax returns for **Year 1** and **Year 2**, then the Company had an undeclared PAYE debt (or at least a contingent tax debt) owing to Revenue in respect of that excess at the time of the Examinership. Section 984B TCA1997 states that the amount the Company was obligated to deduct (*"whether or not made"*) shall be a liability of the Company.
49. As already stated under **REDACTED** of the Proposals, it states:
- "These proposals cover all of the Company's liabilities including without prejudice to the generality of the foregoing, contingent and prospective liabilities at the Fixed Date..." (emphasis added)*



50. Given that the proposals approved by the High Court effectively wrote off those liabilities (save for <10%) it is my view that the Respondent is not entitled, post Examinership, to raise assessments in respect of debts (contingent or otherwise) absolved by the proposals.
51. For this reason, I determine that the Respondent may not raise amended assessments for Year1 and Year 2 in respect of additional remuneration up to €52,000.

### **Conclusion**

52. I therefore determine that the assessments for the Year 1 for the amount of €11,974, and for Year2 in an amount of €16,005 should be vacated.
53. I determine that the Respondent shall not raise amended assessments for Year 1 and Year 2, seeking to include PRSI, relating to the Appellant, but unpaid by the Company.
54. This appeal is determined in accordance with Taxes Consolidation Act 1997, section 949AK.

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**PAUL CUMMINS**  
**APPEAL COMMISSIONER**  
**13<sup>th</sup> February 2020**





## **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) A person aggrieved by a decision of the Revenue Commissioners in relation to a claim by that person for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, may appeal that decision to the Appeal Commissioners, in accordance with section 949L, within the period of 30 days after the date of that decision.]*

