



72TACD2020

APPELLANT

BETWEEN/

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against an assessment, under Chapter 5 of Part 41A Taxes Consolidation Act 1997, as amended ('TCA 1997'), to income tax for the tax year 2016. This appeal also relates to the operation of section 997A TCA 1997.
2. By agreement of the parties, this appeal is held without a hearing under section 949U TCA 1997.

Background

3. The Appellant was jointly assessed with his spouse in the **Year 1** tax year.
4. During **Year 1** both the Appellant and his spouse were directors and >15% shareholders in **REDACTED**, trading as **REDACTED**.
5. In **Year 1**, PAYE-related taxes, deducted from salaries paid to employees and the directors were not fully remitted by the Company to the Respondent. The Company entered the Examinership process on **X date, Year 1**. The Examiner failed to source new investors and the Company was placed into a creditors' liquidation on **Y date, Year 1**. At the commencement of the Examinership there was a PAYE/PRSI liability of



€23,286 due to the Collector General in respect of **Month X, Year 1** (P30) PAYE-related liabilities. The Liquidator did not have funds available to pay this and the amount remained outstanding.

6. On **Z Month, Year 2**, the Respondent raised an assessment to income tax on the Appellant in respect of the tax Year 1, in the sum of €23,286, pursuant to the provisions of Chapter 5 Part 41A TCA1997. The Appellant duly appealed.

Legislation

7. The relevant legislative provision is section 997A TCA 1997 which is set out at **Appendix I**.

Submissions

8. The Appellant, both himself and his spouse each having **> 15%** shareholding in the Company, did not dispute that he was a person with a 'material interest' in the Company in accordance with S.997A TCA 1997. He accepted that the Company failed to remit certain taxes in relation to the emoluments in respect of the tax year of assessment **Year 1**.
9. However, he stated that the "financial difficulties at **REDACTED**" arose due to "the sudden and totally unexpected withdrawal of support from our investor". The Appellant stated that "during the Examinership period every single payment had to be overseen and approved by the Examiner. We highlighted to the Examiner on numerous occasions that the **X Month** P30 was due for payment circa **X+1 Month** 19th and this matter needed immediate attention" and that "the money was in our account to pay Revenue if the Examiner was happy to approve the payment which he never allowed or agreed."
10. During the liquidation period the Appellant submitted that he "stated clearly during this period that Revenue must be a preferential creditor" and "despite raising over **REDACTED**", the Liquidator stated that "there was not enough money to pay the only outstanding P30." The Appellant submitted that "the funds were in the Company to



pay Revenue and it is astounding that the Liquidator took all that money and never paid Revenue”.

11. The Appellant submitted that the Liquidator’s Report clearly states that “all directors acted honestly and responsibly in the affairs of the company”.
12. The Appellant did not dispute the interpretation of the legislation but submitted that he had been unaware of his legal and taxation obligations as regards the application and operation of section 997A TCA 1997.
13. The Appellant submitted that at the creditors meeting held as part of the liquidation process, the Respondent expressed the view that “the Examiners and Liquidators costs were outrageous and ridiculous” and “that the Creditors Committee did not approve the Liquidator’s remuneration”.
14. The Respondent sympathised with the Appellant but submitted that a liability to income tax for **Year 1** arose in accordance with the operation of section 997A TCA 1997 and that the Respondent was obliged to raise an assessment to tax in such circumstances and that “the onus is on the Appellant to show that S.997A does not apply”.

Analysis and findings

15. Section 997A (2) provides that:

‘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.’

Thus, the provision applies to proprietary directors. Section 997A(1)(b) provides as follows;

(1)(b) For the purposes of this section—

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 the question of whether a person is connected with another person shall be determined in accordance with section 10. (emphasis added)

16. Section 997A (3) provides:

'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.'

17. Section 997A (4) provides:

'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 which this section applies in priority to tax deducted from persons to whom this section applies' (emphasis added)

18. The Appellant did not dispute the fact that he was a proprietary director and that tax deducted from emoluments in respect of the **Year 1** had not been fully remitted by the Company. The Appellant submitted that up to the date the Examinership process started, whilst himself and his wife were in control of the company, the Company's taxes were all paid and up to date. He could not understand why the Liquidator did not pay the amount due and was unaware of the legal and taxation obligations in relation to s.997A.

Conclusion



19. The wording of s.997A is clear in that it provides that '*no credit ... shall be given*' in the circumstances which arise in the within appeal, namely, where the tax deducted by the company in respect of the emoluments of the Appellant was not fully remitted to the Respondent.
20. The wording of section 997A (4) underlined above uses the prescriptive 'shall'.
21. It is clear from the submissions put forward by both parties in this appeal, that the PAYE-related liabilities of the Company were fully met until the last month prior to Examinership. Upon the shortfall in PAYE-related liabilities arising in **X Month, Year 1**, the effect of section 997A (4) TCA1997 is to treat monies previously paid as directors' PAYE to the Respondent by the Company, earlier in **Year 1**, as now paid in respect of '*persons other than persons to which this section applies*'. This, effectively, strips the directors of a credit for PAYE paid in respect of them before the shortfall arose.

Determination

22. While the Appellant may well feel aggrieved at this outcome, I do not consider that I have discretion to depart from the clear statutory wording of section 997A TCA 1997 and as a result, I have no alternative but to determine that the assessment dated **Z Month, Year 2** in the sum of €23,286 shall stand.
23. This appeal is hereby determined in accordance with section 949AK TCA 1997.

APPEAL COMMISSIONER

PAUL CUMMINS

20 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) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, the provisions of *section 949* shall apply to such decision as if it were a determination on a matter referred to in *section 864*.]

