



Ref: 77TACD2020

BETWEEN/

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the application of the Zero Rate Relevant Contracts Tax (RCT) to a subcontractor.
2. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The Appellant is a subcontractor to whom relevant contract tax applies, who wishes to have payments due to him from his Principal contractor paid gross of any RCT deductions. He wishes therefore to be treated as a subcontractor to whom the zero rate of RCT is applied on such payments.
4. RCT is a withholding tax that applies to certain payments by principal contractors to subcontractors in the construction, forestry and meat-processing industries. The rates of tax are 0%, 20% and 35%.
5. A subcontractor is a person who enters into a relevant contract with a principal contractor in the construction, forestry or meat processing industries.

6. The Respondent by letter dated 12 March 2019 informed the Appellant that his rate of RCT as a subcontractor had been determined to be 20%.
7. The Appellant appealed the determination to the TAC on 25 March 2019.

Legislation

Taxes Consolidation Act 1997

Section 530G Zero rate subcontractor.

(1) Subject to subsections (2) and (3), this section applies to a person in relation to whom the Revenue Commissioners are satisfied that the person—

(a) is or is about to become a subcontractor engaged in the business of carrying out relevant operations,

(b) carries on or will carry on business from a fixed place established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(c) properly and accurately keeps and will keep any business records to which section 886(2) refers and any other records normally kept in connection with such a business,

(d) has throughout the previous 3 years complied with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts, in relation to—

(i) the payment or remittance of taxes, interest and penalties,

(ii) the delivery of returns, and

(iii) the supply, on request, of accounts or other information to a Revenue officer,

and

(e) in the case of a person who was resident outside the State at some time during the previous 3 years, has throughout that period complied with all the obligations comparable to those mentioned in paragraphs (c) and (d) imposed by the laws of the country in which that person was resident at any time during that period.



Section 530H Standard rate subcontractor.

(1) Subject to subsection (2), this section applies to a person in relation to whom the Revenue Commissioners are satisfied that the person—

(a) is or is about to become a subcontractor engaged in the business of carrying out relevant operations,

(b) carries on or will carry on business from a fixed place established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(c) properly and accurately keeps and will keep any business records to which section 886(2) refers and any other records normally kept in connection with such a business,

(d) has throughout the previous 3 years complied substantially with the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts,

(e) in the case of a person who was resident outside the State at some time during the previous 3 years, has throughout that period complied with the obligations comparable to those mentioned in paragraph (c) and has throughout that period complied substantially with the obligations comparable to those mentioned in paragraph (d) imposed by the laws of the country in which that person was resident at any time during that period,

(f) has provided to the Revenue Commissioners whatever information is required by them to register the person for tax purposes, and

(g) is not a person to whom section 530G applies.

Submissions

8. The Appellant submitted by way of his appeal documentation:

That he didn't agree with the decision of the Revenue because he needed to receive all of his contracting income to support his family. In correspondence to the TAC dated 1 May 2019 the Appellant advised that he wished to have the zero rate of tax applied to payments from his Principal contractor.

9. The Respondent submitted:

a) The Appellant registered as an employee in or around 5 April 2015.



- b) He subsequently registered as a subcontractor on 5 September 2016 and described his trade as a “wall fixer” in his tax return for 2016.
- c) He filed returns of income for 2016, 2017, and 2018.
- d) He ceased his self-employed registration on 20 August 2018 and re-registered as self-employed on 6 February 2019.
- e) Revenue determined that the Appellant did not qualify for the Zero RCT rate due to the gap in his employment details between 21 August 2018 and 5 February 2019 despite filing his income tax return for 2018.
- f) Revenue submitted that the Appellant also had an employment gap from 24 March 2016 to 4 September 2016.
- g) Revenue contacted the Appellant on 3 July 2019 to determine his employment status for the period 21 August 2018 to 5 February 2019, but to date the Appellant has not provided the information required.
- h) Revenue pointed out that the Appellant is appealing the application of the 20% RCT rate allocated to him in respect of payments from his Principal contractor.

Analysis

10. In the RCT system a principal contractor is authorised by Revenue to deduct tax, if any, at the appropriate rate from each payment to a sub-contractor. The rate that is applied to a sub-contractor depends on the sub-contractor's overall tax compliance record. In general, sub-contractors who keep their tax affairs up to date are subjected to the zero rate. Other subcontractors who do not meet the conditions for zero rating set out in Section 530G TCA 1997 are subjected to the 20% rate as set out in Section 530H TCA 1997. The Respondent has determined that the Appellant is regarded as a subcontractor to which Section 530H TCA 1997 applies.
11. As with every withholding tax, like RCT, the amount of tax deducted by the Principal contractor from the subcontractor is available as a tax credit for the subcontractor when making its returns to Revenue.
12. The Respondent has correctly applied the 20% rate of RCT to the Appellant who has failed to meet the conditions set out for zero rating in accordance with Section 530G TCA 1997.



Conclusion

13. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable.
14. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: *'The burden of proof in this appeal 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.'*
15. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal and I determine that the Respondent is correct in applying the 20% rate of RCT to payments by a Principal contractor to the Appellant. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

25 FEBRUARY 2020

