113TACD2021

[redacted]

APPELLANT

V

THE REVENUE COMMISSIONERS

RESPONDENT

DETERMINATION

Introduction

1. This is an appeal against a Notice of Estimation dated 25th February 2014 raised against [redacted] (hereinafter referred to as Company D) for PAYE in the following amounts and covering the following periods:

Year Ended 31st December 2008	€12,973
Year Ended 31st December 2009	€16,747
Year Ended 31st December 2010	€19,329
Year Ended 31st December 2011	€21, 814
Total	**€70,863**

2. This appeal is also consolidated with an appeal by [redacted] (hereinafter referred to as the Appellant) in respect of Amended Notices of Assessment raised on 11 February 2015 in the following amounts:-

Year Ended 31st December 2008	€10,430

Year Ended 31st December 2009	€14,054
Year Ended 31st December 2010	€13,456
Year Ended 31st December 2011	€20,136
Total	**€58,076**

3. The Appellant asserts that certain expense payments made by Company D were reimbursement of expenses incurred by its proprietary director, the Appellant, in the performance of his employment work with Company D.

4. The Respondent argues that the expenses in question were not incurred wholly, exclusively and necessarily in the performance of his employment duties as prescribed by Taxes Consolidation Act 1997(TCA), section 114.

5. While there is an issue with regard to the raising of a double assessment contrary to TCA, section 959F, the Respondents gave an undertaking during the hearing that in the event that the Appeal Commissioner finds in the Respondent's favour on the issue of the deductibility of the expenses, and the tax is paid by the director personally, then the Notice of Estimation on the company will be adjusted accordingly. If the tax is paid by Company D on foot of the Notice of Estimation, the personal assessments raised on the Appellant will be reduced accordingly.

6. A hearing took place on [redacted] 2021, at which the Appellant provided sworn evidence related to the expense payments under appeal.

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Background

7. The Appellant, is a proprietary director of Company D.

8. Company D is incorporated in Ireland and has been owned at all material times by the Appellant. Company D has its registered office at [redacted].

9. In the period to which this appeal relates, years of assessment 2008 to 2011, Company D operated a business of providing project management services and related technical consultancy services. The services that Company D contracted to provide in the period, were those of the Appellant as a "Projects Engineer".

10. Under an initial contractor's agreement dated the 13th January 2005, Company D agreed to provide the services of the Appellant, an employee and director of Company D, as a Projects Engineer to [redacted], based in [redacted] (hereinafter referred to as the "Agency Company"). In turn, the Agency Company contracted to provide [redacted] hereinafter referred to as the "Pharma Company", with project engineer services using the Appellant to provide those services.

11. Under the arrangements, Company D invoiced the Agency Company based on the Appellant's timesheets, approved by the Pharma Company and the Agency. In turn the Agency Company invoiced the Pharma Company.

12. The contract between Company D and the Agency Company was for an initial 12 month period, but actually continued up to the 30th March 2012. The offer of contract dated the 22nd October 2004 between Company D and the Agency Company contained the following details:

a. *Name: Appellant*

b. *Position: Projects Engineer*

C. *Location: Pharma Company*

d. *Rate: €36 per hour*

e. *Expenses: Not applicable*

f. *Duration: 12 months initially*

g. *Hours of Work: 39 hours per week*

13. The contract specified that Company D, as Contractor, may carry out services for other clients except direct services to the Agency Company's customers or competitors during the term of the contract.

14. The contract specified that the Contractor was not an employee of the Agency Company.

15. Payment under the contract was described as follows:

- *the Contractor will be paid as may be agreed from time to time, for hours worked on receipt of a monthly invoice…*
- *The Contractor shall not be entitled to invoice for non-productive man-hours, such as sickness or vacations.*
- *The Contractor may be required to work at various sites as directed and that any direct costs incurred would be reimbursed on receipt of an invoice for such outlay.*

16. The Respondent has allowed a deduction in full for all invoiced expenses between Company D and the Agency Company; the Respondent accepts that these expenses

were wholly, exclusively and necessarily incurred in the performance of the duties of the Appellant. These allowed vouched expenses included certain travel and non-travel expenses.

17. However, the Respondent identified the following additional amounts of travel and subsistence expenses which it believes have been incorrectly credited/paid to the Appellant on a tax-free basis by Company D. These expenses were not subjected to deduction of tax under the PAYE/PRSI system by Company D in circumstances where the sums paid were, *inter alia,* in respect of travel and subsistence claimed in respect of journeys to and from home to the Pharma Company sites. The amounts in question are as follows:

Year of Assessment	**Travel & subsistence payments made to the Appellant by Company D**
2008	€25,438
2009	€32,837
2010	€37,171
201I	€41,951
Total	**€137,397**

18. In the course of a Revenue audit of both the Appellant and Company D, amounts that had been paid by Company D to, or on behalf of, the Appellant without deduction of tax were identified, which the Respondent was not satisfied met the test for deductibility under section 114 TCA 1997. In addition, satisfactory evidence was not submitted to substantiate the expenses paid to or on behalf of the Appellant.

19. Following failure to agree the appropriate treatment with either Company D or the Appellant;

(a) Amended assessments to income tax were raised on the Appellant for each of the years under audit, to charge tax under Schedule E on amounts paid to him or on his behalf by Company D that the Respondent was not satisfied qualify for a deduction under section 114.

(b) These assessments for each of the years 2008, 2009, 2010 and 2011 were appealed by the Appellant.

(c) Estimates were made of the amounts of tax which Company D, in the opinion of the Inspector of Taxes, should have been paid in respect of each of the years 2008 – 2011, in accordance with section 990(1)(a) TCA 1997 (PAYE). Notices of these estimates were served in accordance with section 990(1)(b) TCA 1997, dated 25 February 2014.

These estimates were appealed by letter dated 6th March 2014 by Company D.

Legislation

Statutory provisions being relied on:

Section 112 TCA 1997
Section 114 TCA 1997
Section 117 TCA 1997
Section 118 TCA 1997

Section 929 TCA 1997
Section 983 TCA 1997
Section 985A TCA 1997
Section 990TCA 1997

Income Tax (Employments) (Consolidated) Regulations, 2001

20. The charge to taxation pursuant to Taxes Consolidation Act 1997 (TCA), section 112 provides:

> *(1)Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.*
>
> *(2)(a) In this subsection, "emoluments" means anything assessable to income tax under Schedule E.*

21. Section 114 TCA 1997 deals with the deductibility of expenses for Schedule E purposes and reads as follows:

- *"Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed".*

22. Section 117 TCA 1997 provides:

> *(1) Subject to this Chapter, any sum paid In respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise*

chargeable to income tax as income of that director or employee, be treated for the purposes of section 112 as a perquisite of the office or employment of that director or employee and included in the emoluments of that office or employment assessable to income tax accordingly; but nothing in this subsection shall prevent a claim for a deduction being made under section 114 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment.

(2) The reference in subsection (1) to any sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him or her,'

23. Section 118(1) TCA 1997 contains the general charging provisions for benefits in kind and provides:

"

(1) Subject to this Chapter, where-

(a) a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of-

i. *living or other accommodation,*
ii. *entertainment,*
iii. *domestic or other services, or*
iv. *other benefits or facilities of whatever nature, and*

(b) apart from this section the expense would not be chargeable to income tax as income of the director or employee

then, sections 112, 114 and 897 shall apply in relation to so much of the expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount of the expense had been refunded to the director or employee by the body corporate by means of a payment in respect of expenses, and income tax shall be chargeable accordingly. "

Case law

Relevant Irish case law relating to the Interpretation of Statutes:

Inspector of Taxes v Kiernan [1981] IR 117

Revenue Commissioners v Doorley [1933] IR 750

O'Connell v Fyffes Banana Processing [2000] IESC 37 Supreme Court, 24 July 2000.

Bookfinders Ltd. v The Revenue Commissioners [2020] IESC 60

Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners (2010) ITR 77

Relevant UK case law relating to employment expenses:

Ricketts v Colquhoun (H.M. Inspector of Taxes) [1926] AC 1

Bennett v Revenue & Customs Commissioners [2007] STC 158

Elderkin v Hindmarsh [1998] STC 267

Kirkwood v Evans [2002] STC 231

Warner v Prior (Inspector of Taxes) [2003] STC (SCD) 109193

Revenue and Customs Commissioners v Banerjee (No. 1) [2010] STC 2318

Owen v Pook [1969] 45 TC 571

Nolder v Walters [1930] 15 TC 380

Taylor v Provan [1974] STC 168

Miners v Atkinson (Inspector of Taxes) 1997 STC 58

Brown v Bullock (1961) 1 WLR 1095 at 1102

Knapp v Morton [1999] STC 13

Relevant Irish case law relating to employment expenses:

Phillips v Keane [1925] 2 IR 28

O'Broin v MacGiolla Meidhre [1959] 1 IR 98

Kelly v Quinn [1964] IR 488

MacDaibhead v SD. [1978] ITR Vol 3 1

Relevant Tax Appeals Commission determination relating to employment expenses:
Tax Appeals Commission Determination 20 TACD 2018

MATERIAL FINDINGS OF FACT

24. Based on the credible sworn testimony of the Appellant given at the hearing held on [redacted] 2021, coupled with the documents and submissions presented to me by both the Appellant and the Respondent, I have established the following material findings of fact.

25. The sums in question comprise unvouched travel and subsistence calculated by the company on a flat rate basis (i.e. on the basis of the Civil Service Rates) and ' vouched'

expenditure on foreign travel and related expenditure, client meetings/presentations, and sundry Christmas gifts/other, reimbursed by Company D to the Appellant but not recovered by Company D under its contract with the Agency Company / Pharma Company.

26. The original contract signed in 2005 between Company D and the Agency Company sets out the duties under the contract as the provision of a Contractor (the Appellant) to provide services of a "Projects Engineer". The earlier and related document "offering a contract of services" to the Appellant in October 2004 stated that the location of the services would be at the Pharma Company.

27. Much of the expenditure paid on a tax-free basis relates to journeys undertaken from the director's home in [redacted] to Pharma Company base in [redacted]. This is a round trip of 100km to 110km approx. In addition to the payment of flat rate travel expenses (based on the Civil Service rates) on a tax free basis, there are significant claims in respect of overnight subsistence in [redacted], a location which is approximately 50km from the director's home. There are other journeys claimed for trips to [redacted] relating to benchmark factory sites of other pharmaceutical companies using similar manufacturing equipment or processes.

28. The Appellant explained how Company D came to enter into contract in 2004/2005 with the Agency Company/Pharma Company

29. At the start of the contract in 2005, the Appellant was solely based at home doing design drawings and electronic drawings and submitting them to the Pharma Company. These were called red lining drawings. As time progressed and the Appellant demonstrated his ability to the Pharma Company, his role developed. The Appellant would go to the Pharma Company site and prepare "hand marks" drawings. This involved taking master drawings, measuring, hand marking them up and revising the master drawings.

30. During the appeal period 2008 to 2011 the Appellant frequently visited the Pharma Company site for site surveys, measurements, meetings, design brief meetings, etc., all in part of the preparation of the design drawings. As well as travelling to the Pharma Company site in [redacted], the Appellant also travelled to other destinations both in Ireland and abroad, on behalf of the Pharma Company for the design of the specific projects. The Appellant's role evolved in the appeal period into whole project management and project delivery. This involved full project management through the life cycle of the project, as well as the design phase. This included undertaking the procurement aspects of the project, the implementation, the validation and the handover to the Pharma Company. This included design meetings with consultants, architects, structural engineers; benchmarking at other pharmaceutical sites.

31. The Appellant, under cross examination, explained in some detail one of the projects which he undertook in the appeal period 2008-2011. This project, called project H, was the construction of a solid dose manufacturing facility for branded tablets. It involved the design of a new four-storey building; the design and specification of all the equipment which would go into that to make the medicinal tablets. The Appellant project managed the purchasing of all the manufacturing equipment; the factory acceptance testing, which was completed at the equipment manufacturer's facilities, typically in countries such as Germany Belgium and Italy; oversee the installation and the handover to the Pharma Company. Under the design phase the Appellant would make benchmarking visits to other Irish pharmaceutical companies' sites which had similar facilities.

32. The Appellant, under cross examination, described another project [redacted]. This was a project that involved the design of a room layout for a new tablet press, to compress powder granule into branded medicinal tablets. This involved designing room layouts for the powder feeding system to the press, how to feed the material into the manufacturing machinery; writing the specifications for the German manufactured machinery; travelling to Germany on numerous occasions; purchasing machinery for the Pharma Company, undertaking the factory acceptance procedure; the testing would then

move to the Pharma Company site when the equipment is installed on-site and handed over.

33. The Appellant was asked about the reference in the original contract in 2005 to "no expenses". The Appellant gave evidence that there was no expenses paid to contractors by the Pharma Company whilst the contractor was on business within Ireland. So there were no Irish expense sheets submitted to the Pharma Company, through the Agency Company from Company D. Irish Expenses were, however, paid by Company D to the Appellant.

34. The Appellant gave evidence that there was an agreement in place in the appeal period that Company D could bill for additional hours Irish travel time from the Appellant's home and back, while the Appellant was travelling to and from the Pharma Company site or other non-related sites in Ireland from. (When the Appellant undertook international travel, of which there was a substantial amount during the appeal period, Company D was permitted to invoice the Agency Company / Pharma Company for those travel costs.). The Appellant said this arrangement, which was not documented, was between himself and the person in the Pharma Company who approved his timesheets for billing purposes.

35. The Appellant proceeded to give evidence on the assortment of business related expenditure he was reimbursed by Company D. He also confirmed that he was paid subsistence payments in line with the published guidelines of the Respondent. Under cross examination, the Appellant was at a loss to explain certain specific instances of his claim for an overnight allowances from Company D when he was not away from home for the requisite time required to qualify for such allowances, under the Respondent's Guidelines.

36. A sample review of the Appellant's expense claims sheets for the period under appeal, indicates that the Appellant, travelled to the Pharma Company site in [redacted], typically twice a week, although in some weeks this frequency was either greater or less.

Some of his visits there involved overnight stays in [redacted] as commissioning / checking work associated with the Pharma Company machinery. In some instances these activities could only take place during night time hours, due to production scheduling. This required the Appellant to seek accommodation near the Pharma Company site and this attracted subsistence expense and claims.

37. During cross examination, it became evident that there was some imprecision by the Appellant in calculating which subsistence claims qualified for the overnight rate and the day rate under the conditions specified by the Revenue Statement of Practice for such expense claims.

38. The Appellant also gave testimony that certain amounts originally claimed also included certain sums, which the Appellant called "duplicates", which the Appellant accepted during the hearing, under cross examination, were disallowable.

39. The Appellant was also cross examined about the mileage expense claims and distances between his home and certain locations, including the Pharma Company Site in Ireland, which he visited and claimed for from Company D. Under cross examination he conceded that there were some errors of overstatement of distances.

40. Following his cross examinations, the Appellant conceded that certain of his expense claims were not allowable under section 114 and he submitted a revised basis of claim.

SUBMISSIONS – Appellant

41. The Appellant submitted that he is a proprietary Director of Company D. Company D operates from a fully functional office maintained at the Appellants residence in [redacted]. The Appellant is the 100% shareholder and during the years under appeal he was the sole employee of the company.

42. Under a Contractor's Agreement dated the 13th January 2005 Company D agreed to provide engineering services to the Pharma Company via a contract with the Agency Company. The initial contract was for a period of 12 months but was renewed and enhanced verbally at each subsequent 12 month anniversary.

43. The express intention was that Company D would be subject to direction from the management team at the Pharma Company's site in [redacted] and would be allocated assignments to perform at his [redacted] Office. Subsequently, due to the satisfaction of the work carried out by Company D, the Pharma Company required Company D, via the Appellant, to travel and engage with end-users of the Pharma Company at various locations in Ireland, mainland Europe and North America.

44. The contract was verbally renewed and the hourly rate was enhanced annually, €37.50 (2006), €40.90 (2007), €43.25 (2008), €45.50 (2009) etc.

45. There was a separate and legally distinct employment relationship between Company D and the Appellant.

46. The Pharma Company, does not have a policy of reimbursing domestic travel and subsistence expenses to contractor companies. This policy also extends to certain elements of foreign travel. Instead, the Pharma Company permitted Company D to invoice the Agency Company by way of a charge of an hourly rate whilst engaged in travel to/from locations. This allowed the Agency Company to onward charge the contractor's time without having recourse to justifying travel & subsistence expenses within the Pharma Company's own accounting system.

47. The Appellant was required to perform a typical working week of between 37.5 and 40 hours. Taking into account Christmas/ bank holidays, annual leave and sick days, this

would equate to 46 full working weeks per annum. The Appellant summarised below the hours charged for each of the years 2008 to 2011:

Year	Hours Invoiced	Weekly Hours Base on 46 Working Weeks Per Year
2008	2,190	47.6 hours per week
2009	2,124	46.2 hours per week
2010	2,255	49.0 hours per week
2011	2,327	50.6 hours per week

48. The Appellant argued that the above illustrates that Company D was permitted to charge hours in excess of the normal working week in order to compensate for travel expenses incurred whilst the Appellant was engaged in travelling to/from locations.

49. The Appellant submitted that Company D reimbursed him for the vouched expenses and in respect of the round sum expenses, in accordance with Revenue Guidance notes.

50. The Appellant argued that the Respondent relied extensively on case law. Indeed the occupation/employment description associated with much of the quoted cases immediately signify that the taxpayers had specific places of work i.e. Recorder of Portsmouth, Pilot, Civil Servant, Teacher, Principal of National School and Army Officer.

51. It could be argued that there were temporary and itinerant places of work associated with *Bennett V Revenue Commissioners (Scatfolder), Elderkin V Hindmarsh (Inspector of Pipe Laying)* and *S P O'Broin V MacGiolla Meidhre (County Engineer)*, but all these taxpayers on

their original appointment to these positions were well aware that there was not a fixed place of work.

52. The Appellant argued that the Respondent's conclusions in the Tax Appeals Commission case *20 TACD2018* gave far too much reliance to the relationship between Customer and Company rather than the relationship between Company and Employee.

53. The Appellant argued that in *20 TACD2018,* the nature of the Appellant's work in that case required him to perform his duties of employment at the various sites of the end user enterprises. As such, each site becomes his place of work and the cost of travel between home and those sites was not allowable. In contrast in this appeal, the Appellant operated from his employer Company D's base in [redacted] which has a fully functional modern office available for his use. The Appellant was engaged by Company D to carry out designs for equipment and facility expansions required for the manufacture of pharmaceutical products. This design work was carried out exclusively at the company's base in [redacted]. Subsequently due to the successful completion of these designs, the Pharma Company required Company D to travel and engage with clients of the Pharma Company at various locations in Ireland, mainland Europe and North America. The Appellant travelled to multiple foreign locations, mostly ranging between one and three days. Apart from the Company's base in [redacted], the Appellant would travel within Ireland mostly for one or two day assignments.

54. With regard to the round sum expenses, the Appellant relied on practice statements of the Respondent and in particular SP – IT/2/07 at paragraph 2.1 where it states:

> *"Arising from an employee's or office holder's entitlement to a tax deduction in respect of certain expenses, there exists a long-standing practice under which employers may reimburse tax-free to office holders and employees the expenses of travel (and subsistence relating to that travel) subject to certain conditions being fulfilled."*

55. The Appellant argued that it had complied with the records to be kept in respect of the reimbursement of unvouched travel and subsistence payments in accordance with the Respondent's Statement of Practice SP-IT /2/07:- which states as follows;

As regards the reimbursement of expenses based on an acceptable flat rate allowance, the employer must retain a record of all of the following:-
the name and address of the director or employee
the date of the journey
the reason for the journey
the kilometres involved
the starting point, destination and finishing point of the journey
the basis for the reimbursement of travel and subsistence expenses (e.g. an overnight stay away from an individual's normal place of work)

56. It was submitted by the Appellants that whilst the required records in accordance with SP-IT/2/07 were maintained, conversely other additional supporting documentation was not retained as there was no requirement to retain same.

SUBMISSIONS-Respondent

Appellant's Appeals

57. The Respondent argued that employment expense must be incurred *in the performance* of the duties of the office or employment. Expenses incurred by an employee in travelling from his/her home to and from his/her normal place of work are not allowable expenses as they are not incurred *in the performance* of the duties of employment but merely to put the employee in a position to do so. For an expense to be allowable, it must be incurred in the actual performance of the duties of the office or employment or as a direct consequence of those duties.

58. In support of its contention that the deductibility of the expenses in question must be established based on an interpretation of section 114 TCA 1997, the Respondent cited

from case law which has considered the meaning of that section (and its UK equivalent).

59. The Respondent's submissions commenced with *Ricketts v Colquhoun [1926] A.C 1*. In that case a barrister, residing and practising in London, was engaged as a Recorder of a provincial borough. The emoluments of his office had been assessed to income tax under Schedule E of the Income Tax Act, 1918 in respect of certain travelling expenses incurred by him in travelling from London to the borough and back, and certain hotel expenses incurred while in the borough. In disallowing the travelling expenses Viscount Cave at page 4, observed that travel expenses:

> *"must be expenses which the holder of an office is necessarily obliged to incur - that is to say, obliged by the very fact that he holds the office and has to perform its duties - and they must be incurred in - that is, in the course of - the performance of those duties.*
>
> *The expenses in question in this case do not appear to me to satisfy either test. They are incurred not because the appellant holds the office of Recorder of Portsmouth, but because, living and practising away from Portsmouth, he must travel to that place before he can begin to perform his duties as Recorder and, having concluded those duties, desires to return home. They are incurred, not in the course of performing his duties, but partly before he enters upon them"*

60. The Respondent progressed to the concurring judgment of Lord Blanesburgh and in particular the objective requirement of the rule when stating at page 7:

> *"the language of the rule points to the expenses with which it is concerned being only those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties - to expenses imposed upon each holder ex necessitate of his office, and to such expenses only. It says: "If the holder of an office" - the words, be it observed, are not "If any holder of an office" - "is obliged to incur expenses in the performance of the duties of the office" - the duties again are not the*

duties of his office. In other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective: the deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."

61. Relying on that interpretation, the Respondent argued that the travel from the Appellant's home to the Pharma Company's site is not a requirement imposed by the particular office concerned. Rather a qualifying expense needs to be *"expenses imposed upon each holder ex necessitate of his office and to such expenses only".*

62. The Respondent argued that Lord Blanesburgh considered that it could not be said that each and every person who held that office would have to travel to perform its duties and consequently the deduction was denied. Therefore, in *Ricketts* it was held that it is normally a matter of personal choice as to where the employee resides, and that consequently, the cost of travelling from that location to where the work is actually performed could not be said to be performed in the course of performing the duties. Rather, it simply put the claimant in a position where he could do so.

63. The Respondent cited Viscount Cave in the same case who stated as follows:

"A man must eat and sleep somewhere whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home and if he elects to live away from his work so that he must find board and lodging away from his home, that is by his own choice and not by reason of any necessity arising out of the employment. Nor does he as a rule eat or sleep in the course of performing his duties, but either before or after their performance. "

64. The Respondent submitted that the facts in *Bennett v. Revenue Commissioners* [2007] STC (SCD) 158, a decision of the Special Commissioners in which reliance was made on *Ricketts,* was relevant to this appeal. In *Bennett*, the taxpayer, who lived in Lancashire,

was a scaffolder employed on various construction sites in the London area which involved finding accommodation during the week. Reading from the headnote, the Respondent highlighted the following passage:

> *"The expenses incurred by the taxpayer in travelling between his accommodation address in London and the construction sites merely put him in a position to carry out his duties. They were not incurred in the performance of his duties within the meaning of section 198(1)(b). Moreover, because the London sites were not temporary workplaces within paragraph 4 of schedule A to the 1988 Act, travelling to and from those sites was ordinary commuting. Accordingly, the travel expenses were not deductible. As to the claim for subsistence costs and accommodation expenses, as the taxpayer's travel expenses were not allowed as relating to commuting, neither for the same reason were his subsistence and accommodation claims."*

65. *Elderkin v Hindmarsh* [1988] STC 267 was cited by the Respondent as relevant. In that case the taxpayer owned a house where he lived with his family. He was employed as an inspector by consulting engineers specialising in pipe laying and he was required to undertake assignments necessitating his living away from home for long periods. The taxpayer met the cost of his day to day living expenses but received a fixed weekly sum from his employer as a living allowance.

66. Mr Hindmarsh was denied a deduction for the living allowance a decision which was successfully appealed before the General Commissioners. The Crown appealed, contending that the taxpayer's duties were not itinerant duties such as those of a commercial traveller and that his living expenses when *working* away from home were not incurred in the performance of his duties. In allowing the appeal Vinelott J. held that:

> *Before expenditure could be deducted under the provisions of section 189(1) of the 1970 Act it had to be shown not only that it had been*

> *incurred ' wholly, exclusively and necessarily' for the purpose of the taxpayer's employment but also ' in the performance of the duties of that employment. Although the facts clearly establish that the taxpayer was obliged to incur the expenditure caused by having to work away from his home in order to put himself in a position to carry out the duties required of him, it was not incurred in the performance of those duties which ceased when the day's work was done.*

67. He concluded at page 272 that:

> *"The strict application of section 189(1) in the context of a case like this, where an employer makes a lodging allowance in order to meet expenses which as a practical matter he has to incur in order to do his work and where it is then rendered inadequate for that purpose because the employee has to pay tax on it will no doubt be widely perceived as unfair. However section 189(1) re-produces provisions which have been part of the income tax legislation ever since it was re-imposed as a permanent tax in 1853, and if it has survived the many criticisms which have been directed to it, it must, l think, be because of the difficulties that are encountered in framing a provision that will abide these harsh consequences in particular cases without opening the doors to unacceptable abuse.* "

68. The Respondent argued that this case indicates that the rule in question has been in operation since 1853 and that it is the same rule as is set out in section 114 TCA 1997, and is still operational in Ireland.

69. In relation to contractual obligations, the Respondent distinguished *Revenue and Customs Commissioners v Banerjee* [2011] 1 All ER 985, a Court of Appeal decision involving a taxpayer employed under a training contract. In this case, the taxpayer won her appeal to

a deduction for employment expenses. The Respondent submitted that this case is clearly distinguishable on its own facts from the current appeal.

70. Dr Banerjee was employed by the NHS under what was referred to as a "training contract" and claimed a deduction for expenses incurred on training sessions. Throughout her employment, the training courses she attended were compulsory and a prerequisite for maintaining her training contract. She would not have been allowed to continue her employment as a Specialist Registrar had she failed to attend external training sessions. Her contractual position was described by Rimer LJ classified at page 999 as:

> *"being employed exclusively for training purposes. That was the whole purpose of the contract. The relevant expenditure was therefore incurred in participating in the training exercises which she was employed to undergo in fulfilment of such purpose and for which participation she was being paid a salary".*

71. The Respondent distinguished the Appellant's position from that of Dr Banerjee on the basis that the whole essence of Dr Banerjee's contract was a training contract and she would have effectively been dismissed if she had not undergone that training. However, in the Appellant's cases, there was no corresponding requirement that the director travel from his home to the Pharma Company's site locations, and the travel expenses arose because of where he chose to live.

72. The Respondent cited In *Pook v Owen* where the taxpayer was a GP who also had a part-time employment at a nearby hospital. His duties required him to be available for emergency call-outs from home. He would be contacted by telephone and then took responsibility for the patient as soon as he took the call. It was held that Dr Owen's responsibility for a patient began as soon as he received the phone call, and that this represented the commencement of his duties. As a result, the House of Lords held

that he was entitled to a deduction for the cost of travel between home and the hospital while on call-out.

73. The Respondent argued that *Pook* is an exceptional case; that the facts can clearly be distinguished from those in the present case. In *Pook* the duties commenced as soon as the GP took the call and he took responsibility for the patient. ln the present case, the Respondent argued the duties commenced when the Appellant arrived on the Pharma Company site.

74. The Respondent proceeded to cite *Nolder v Walters* 15 TC 380 a case in which an airline pilot drove to the airport on receipt of a phone call to fly to a prescribed destination and claimed for the cost of travelling between his home and the airport. The High Court determined that the travelling expenses were not allowable as they were incurred to put the pilot in a position to carry out his duties and not in the actual performance of those duties.

75. The Respondent cited *Kirkwood v. Evans* [2002] EWHC 30 (CH), where a civil servant who chose to work from home was not entitled to deduct the cost of travelling from his home to his employer's premises. In that case Mr. Evans worked at home for four days per week. While the Court confirmed that his home was also a workplace, his journey to his employer's premises on one day per week was nonetheless ordinary commuting and so did not qualify for relief. Patten J determined at paragraph 12:

> *"The necessity of travelling to Leeds is dictated by his choice of the place where he lives and not by the nature and the terms of the job itself."*

76. The Respondent cited *Taylor v Provan [1974] STC 168*. In this case Mr. Taylor lived in Canada. He was agreed to have unique and unrivalled knowledge and experience of arranging mergers of brewery companies. The terms on which he was employed acknowledged his unique experience and required him to

perform his duties, so far as possible, from his home in Canada. He received no remuneration but was reimbursed his travelling expenses between Canada and the UK. Lord Wilberforce commented:

> *"If a man has to travel from one place of work to another place of work, he may deduct the travelling expenses of this travel, because he is travelling on his work, but not those of travelling to either place of work to his home or vice versa. But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere/act that he may choose to do part of it in a place separate from that where the job is objectively located is not enough."*

77. Lord Reid in the same case commented as follows:

> *"if the holder of an office or employment has to do part of his work at home the place where he resides is generally still his personal choice. If he could do his home work equally well wherever he lived then I do not see how the mere fact that his home is also a place of work can justify a departure from the Ricketts ratio."*

78. However, the House of Lords felt that an exception could be made in the very unusual circumstances of Mr. Taylor's case. Lord Morris at page 177 commented as follows:

> *"The office or the employment was very special. There was probably no-one else who could have filled it. It was an office created to be held by one particular person."*

79. The Respondent sought to distinguish this case from the present case by arguing that in effect, the view of the House of Lords was that Mr. Taylor's location was

an integral, unavoidable and accepted element in determining the nature of the office or employment that he held. Mr. Taylor was uniquely qualified to fill that post and his personal circumstances were central to the terms of his employment. By contrast, in the present case, the Respondent argued that it cannot be said that the director's home location is an integral element in determining the nature of the office/employment. The work that he allegedly carries out at his home could be carried out at any location.

80. The Respondent argued that the fact that the company has its registered office director's home does not make that home the director's "normal place of work". The Respondent cited the case of *Miners versus Atkinson 1997* STC *58* where a company director, who was a computer consultant, claimed a deduction for travel expenses from his home (also the company's registered office) to a client's premises. The claim was disallowed on the grounds that the expenses arose from his personal choice regarding his place of residence, because he was necessarily obliged to work from home. The Respondent argued that the facts in the *Miners versus Atkinson* case were on all fours with the present case and so that case is authority for the premise that if the taxpayer could do his "home" work equally well wherever, then the mere fact that his home was also his place of work could not justify departure from the general rule that expenses incurred in travelling from home to work were not deductible.

81. The Respondent cited *Warner v. Prior* [2003] STC (SCD) 109 related to a teacher who had two places of work, one at the schools where she taught and the other where she marked homework and made preparations for class. She claimed travel expenses between the two places of work. The Special Commissioners found that although she had two places of work and it was objectively necessary for her to have a place of work somewhere other than the schools, decided that the travel expenses between the two were not deductible *"in other words she could move house and not lose her job as it wasn't an intrinsic part of it."*

82. The Respondent argued that the facts in *Warner v Prior* are very similar to those in the present case; that even if I were to find that the director had two places of work (which the Respondent does not accept), the office at the director's home was not dictated by his job but by where he chose to live. The director's home is not essential to the duties he carries out under the contract with the Pharma Company.

83. The Respondent cited *Knapp v Morton* [1999] STC (SCD) 13. The taxpayer who was a non-executive director of a National Health Service Trust, was paid a mileage allowance for his travelling expenses from his home to trust sites. He received papers at his home from the trust and read them in an upstairs room, which he also used for purposes unrelated to his work for the Trust. He appealed against the Inspector's rejection of his claims to deduct the expenses incurred by him in travelling from his home to the Trust sites. The Special Commissioners held that the fact that the taxpayer read trust papers at home did not mean that his home was a base of his employment and, accordingly, the expenses incurred by the taxpayer in travelling from his home to the various trust sites did not qualify for relief from tax.

Irish Jurisprudence

84. Reference was made by the Respondent to *Phillips (Inspector of Taxes) v Keane* IR 1925 Vol II 48 a case concerning a principal of national school who lived six miles from the school due to the difficulty in finding a suitable home anywhere closer. As such, he was obliged to keep a pony and trap and employ a man to transport him from his home to the school and back and claimed a deduction from his Schedule E income as an expense necessarily incurred as a result of travelling in the performance of his duties of an office or employment.

85. Reference to *Ricketts* was contained in the review of submissions of the Revenue Commissioners, but not in the short decision of Sullivan J. who concluded at page 50:

"We do not think that the expenses in question here were incurred in the performance of the duties of the Respondent's office. His case is therefore not within Rule 9 of Schedule E of the Income Tax Act 1918 and the deduction is not admissible."

86. Reference was made to the case of *S P O'Broin (Inspector of Taxes) v Mac Giolla Meidhre*, 1957 IR 98, where a county engineer employed by a county council appealed against an assessment to income tax under Schedule E, claiming a deduction in respect of the expenses including travelling expenses. In holding that the travelling expenses were not allowable, Teevan J. cited the following passage from *Ricketts* at page 103:

"The expenses must "exclusively" relate to the performance of the duties of the office, and the case fails to state facts showing the requisite exclusiveness.

Of the authorities cited in support of the inspector's contention I need only refer to the words of Lord Blanesburgh in Ricketts v Colquhoun 10 TC 118, [1926] AC 1 where he says at page 7, while discussing Sch E rule 9:

It (rule 9) says: "if the holder of an office", the words, be it observed, are not "if any holder of an office", "is obliged to incur expenses in the performance of the duties of the office", the duties again are not the duties of his office. In other words, the terms are strictly, and, I cannot doubt, purposely, not personal but objective; the deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."

87. Further reference to *Ricketts* was made in *H F Kelly (Inspector of Taxes) v Commandant Owen Quinn* [1961] IR 488, a case in which an officer in the defence forces, claimed expenses comprising rent and costs of mess, travelling expenses between his home and army quarters, and gratuities to a batman as deductions against his income. The Circuit Court determined that only the gratuities paid to the batman were incurred wholly,

exclusively and necessarily in the performance of his duties and disallowed the other expenses.

88. In the High Court, distinctions were drawn between TCA, section 81, the provision governing the deductibility of expenses for self-employed persons and TCA, section 114, where commencing at page 493, Kenny J. observed that the:

> *"test for deduction under Schedule D is expenditure for the purposes of the trade, profession or vocation and the word 'necessarily' does not apply at all or appear at all. The next feature is that the expenditure which may be deducted under Rule 9 is that which is necessary in the performance of the duties of the office or employment and not as in Schedule D for the purpose of the trade, profession or vocation. If Rule 9 included monies expended "for the performance of the duties of the office or employment" the test to be applied would be much more liberal. The third feature is that the Rule does not speak of "any holder" of an office or employment of profit but of "the holder of an office or employment of profit'' and this introduces an objective test. By this I mean that the Court has to consider whether the person holding the office or employment is obliged, by the terms and duties of that office or employment, to expend the monies the deduction of which is claimed. The question is not whether the person holding thought that he had to, or ought to, expend that sum.*
>
> *The test is not whether the employer imposes the expense, but whether the duties do, in the sense that, irrespective of what the employer may prescribe, the duties cannot be performed without incurring the particular outlay. This result follows in my opinion from the decision of the House of Lords in Ricketts v Colquhoun [1926] AC11.*

89. At Page 495 Kenny J referred to *Ricketts* and concluded that

> *"As there was no legal obligation on the taxpayer to pay any gratuities to his batman and if the batman had to do his duties whether the gratuities were paid or not, the taxpayer was not necessarily obliged to expend the sums which he has claimed as deductions and on this ground the claim fails. If this conclusion be*

> *wrong the next difficulty for the taxpayer is that they were not paid in the performance of his duties. They were in my opinion paid for the purpose of making it possible for him to perform his duties and on this ground the claim also fails."*

90. *MacDaibhead v SD* III ITR 1 was another case in the Respondent's review of Irish jurisprudence, a case in which the taxpayer held directorships in a number of companies, some of which had external connections. His duties, as director necessitated a considerable amount of travelling around the world. The bulk of these expenses were paid by the relevant companies. However, some incidental fares e.g. taxi fares and phone calls, of which he did not keep exact details, were paid from his own pocket. A deduction for these expenses was claimed against his Schedule E income.

91. The High Court ruled that as the incidental expenses were of the same nature as the expenses which were defrayed by the companies, they could probably have been recovered from some or all of the companies if the taxpayer had made such a claim. The Court could see no reason why the taxpayer *could* not have estimated these expenses for the companies just as easily as he had done so for the Appeal Commissioner. It was the taxpayer's responsibility to prove that the expenses are wholly, exclusively and necessarily related to the office of employment.

92. While reference to *Ricketts* was contained in the review of submissions of the Revenue Commissioners there was no mention to that case in the Court's judgment where McWilliam J concluded that there was not sufficient evidence before the Appeal Commissioner "*by which he could make a deduction of any of these incidental expenses*."

93. Having regard to all of the foregoing cases, the Respondent submitted that the travel expenses incurred by the director in travelling from his home to his place of work at the Pharma Company site are ordinary commuting expenses and are not deductible under section 114 TCA 1997. Similarly, the amounts claimed as

subsistence expenses are not allowable as they have not been incurred wholly, exclusively and necessarily in the performance of the duties.

94. The Respondent also sought additional support for its position in the Determination of Appeal Commissioner Kennedy which was delivered on 24th September 2018 ref: *Tax Appeals* Commission *Determination 20 TACD 2018*. The Respondent argued that the factual matrix in *20 TACD 2018* is almost identical to that in the present case. During the years under appeal *20 TACD 2018*, the company in question supplied engineering services to end-user clients at a number of different locations.

95. Assessments were raised on the director in relation to expenses paid to him by the company on a tax-free basis and a notice of estimation was also issued to the company in relation to the non-operation of PAYE/PRSI. The Revenue Commissioners made it clear that, if successful in the appeals (on the deductibility under section 114 point), they would not seek recoupment of the tax from both the company and the director. The position was that if the tax was actually paid by the company those sums would be credited against the assessments made on the director.

96. The director asserted that the expense payments made by the company were reimbursement of expenses incurred by him in the performance of his work.

97. The evidence was that the company entered into a 19 month contract to provide engineering staff to work on a project for a specific client. Under the terms of the contract, the director, on behalf of the company, was engaged in the management of installation, commissioning and qualification of a project in Europe. The company also contracted with clients to provide engineering services at separate Irish locations.

98. The director submitted that the company reimbursed him for the vouched expenses and in respect of the flat rate expenses, in accordance with Revenue

Guidance notes. The director confirmed that a substantial part of his work required him to be physically present on site. The functions undertaken at the company's office constituted in the main, administrative and accounting functions.

99. In that appeal, the director referred to the policy directions of Revenue in an assortment of publications including Tax Briefings and statements of practice with regard to the payment of travel and subsistence expenses without deduction of tax. The director argued that Revenue had resiled from that stated position and as a consequence, the director had been prejudiced by the failure of the Respondent to apply the law consistently.

100. The Commissioner limited himself to determining the extent to which the payment of expenses by the company to the director constituted income falling within the charge to tax pursuant to TCA, sections 112, 117 or I18 and thereafter considered whether there is a statutory entitlement to deduct prescribed expenses against the director's income in accordance with TCA, section 114.

101. Having considered the extensive body of case law in relation to the deductibility of expenses, the Commissioner's findings were as follows:

i. *The deeming provisions contained in TCA, section 117 treat the payment of expenses by a body corporate to any of its directors or employees as a perquisite for the purposes of TCA, section 112 notwithstanding that no personal benefit may have been derived… [para. 103]*

ii. *Furthermore, as none of the vouched expenditure was incurred wholly exclusively and necessarily in performing the duties of the office or employment, no claim can be made seeking a deduction for such expenses in accordance with TCA, section 114. [para. 103]*

iii. The jurisdiction of the Appeal Commissioners does not extend to supervising the administrative actions or any purported inequity in the Revenue's application of the tax code. As such, the payment of the unvouched travel and subsistence payments in accordance with the Respondent's published guidelines fall within the charge to tax as perquisites with no corresponding entitlement to a deduction for those expenses pursuant to TCA, section 114. [para. 104]

102. The Respondent argues the expenses were incurred purely to put the director in a position to carry out his duties. As such the expenses were not incurred wholly, exclusively and necessarily in the performance of his duties.

Company Appeals

103. In relation to the estimates of PAYE etc. raised against the company, the Respondent argued that all of the expense payments constitute emoluments and are assessable to tax under TCA section 112. The Respondent noted that if the legislation was adhered to strictly, a myriad of claims would arise under TCA, section 114 by individual taxpayers. As such the Respondent issued guidance to employers in relation to what expenses can be paid tax free and thereby avoid a myriad of claims under TCA, section 114 subject to clearly defined parameters. As such the payments made to the Appellant do not fall within those guidelines and therefore were assessable to tax in the normal way.

104. The Respondent submitted that Chapter 4 of Part 42 TCA 1997 and the Regulations made by the Revenue Commissioners under that Chapter to provide for the PAYE system of collection, are the relevant provisions necessary for the Appeal Commissioner to consider in determining the matter of the company's appeals. These statutory provisions do not allow for an interpretation which brings any, or all, of the amounts which are the subject of this appeal, outside of a charge to tax.

105. The Respondent submitted that the PAYE provisions oblige the employer to operate the PAYE system on all emoluments and to deduct tax on the payment of same. It argued that it is an undisputed fact that the Company D has not operated the PAYE system in respect of all of the expense amounts paid to the Appellant. The Respondent noted that it has allowed a deduction for invoiced expenses between the Company D and the Agency Company.

106. The Revenue Commissioners have an established practice, as set out in various tax briefings and Statement of Practice SP-IT/2/07, whereby the reimbursement of expenses of travel and subsistence made by an employer to an employee which meet certain criteria, may concessionally be made without deduction of tax. This is a concessional treatment as provided for under section 849 TCA 1997, being necessary and expedient for effective and efficient administration by employers, employees and the Revenue Commissioners, and is explained accordingly in Tax Briefing 04/2013:

> *"The Act does not make specific provision for the payment of tax-free expenses. However, to avoid the operation of PAYE on expenses which would then lead to repayment claims on foot of deductions due under Section 114, Revenue has long accepted that expenses which meet certain conditions may be reimbursed tax free in certain circumstances. Revenue has given detailed guidance on the circumstances in which tax-free reimbursement of expenses may be made in its Statement of Practice SP/JT/2/2007, in information leaflets 1T51 and JT54, and in this year's Tax Briefing 3 of 2013, all available at: www.revenue.ie."*

107. A deduction under section 114 TCA 1997 applies to the holder of an office or employment of profit. It is the holder of the office or employment who must make a claim to have the amount of any expenditure or expenses that satisfy the test applied by section 114, deducted from his/her emoluments. This is quite clear from a reading of section 114 in conjunction with section 117(1), which states: "but nothing in this subsection shall prevent a claim for a deduction being made under section 114 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or

employment". The claim under section 114 is made by the holder of the office or employment of profit, not by the employer.

108. The Respondent submitted that section 114 is therefore of no relevance in determining the subject matter of this appeal by Company D, which is an appeal by the Company itself as the employer who is not, and could not be, a party to a claim made under section 114. The provisions of Chapter 4 of Part 42 set out require the employer to operate the PAYE system of deduction on all amounts assessable as emoluments under Schedule E.

109. In this case, Respondent is of the view that the concessional treatment as outlined in Statement of Practice SP-IT/2/07 was not available to Company D in respect of the majority of payments characterised by it as reimbursement of expenses to the Appellant.

110. This results in the imposition of the statutory treatment provided for in sections 112, 117 and 118 and Chapter 4 of Part 42 of the TCA 1997. The Respondent submitted that the Appeal Commissioners have no jurisdiction to consider the application of a concession such as that outlined above.

Respondent's Conclusions

111. In conclusion the Respondent submitted that:

i. The travel and subsistence expenses paid by Company D constitute emoluments of the director and are subject to tax under Schedule E.

ii. The expenses do not satisfy the stringent tests set out in section 114 TCA 1997 and accordingly are not deductible against the director's Schedule E income.

iii. The Notice of Estimation on the company in this case was issued based on the opinion of the Respondent that the concessional treatment as outlined in Statement of Practice SP-IT/2/07 was not available to the company in relation to the reimbursement of expenses to its proprietary director without deduction of tax.

Practice SP-IT/2/07 was not available to Company D in relation to the reimbursement of expenses to its proprietary director, the Appellant, without deduction of tax.

112. The application of the provisions of Chapter 4 of Part 42 TCA 1997 and the Regulations made under that Chapter requires the deduction of tax by the employer on the payments made by Company D. The Appeal Commissioners do not have jurisdiction to deal with the non-application by the Respondent of concessional treatment.

113. The quantum of the estimates raised is correct in all material respects, having regard to the amounts paid to or on behalf of the directors and applying the rates of tax, PRSI and income levy/universal social charge in effect in the years of assessment to which these estimates relate.

ANALYSIS & CONCLUSIONS

114. This appeal is concerned with determining the extent to which the payment of expenses by Company D to the Appellant constituted income falling within the charge to tax pursuant to TCA, sections 112, 117 or 118 and thereafter to consider whether there is a statutory entitlement to deduct prescribed expenses against the Appellant's income in accordance with TCA, section 114.

115. Section 114 TCA 1997 deals with the deductibility of expenses for Schedule E purposes and provides for a deduction where the employee or office holder is necessarily obliged to incur expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties.

116. The costs of travel claimed generally relate to travel by the Appellant to and from home when working in the employment of Company D.

117. The expenses in question comprise unvouched travel and subsistence calculated by the company on a flat rate basis (i.e. on the basis of the Civil Service Rates) and ' vouched' expenditure on certain foreign travel and related expenditure ; certain client meetings/presentations; and sundry Christmas /gifts/other. The amounts originally claimed also included certain sums which the Appellants during proceedings described as 'duplicates /non-allowable' and accept now are disallowable under section 114.

118. During the course of the appeal proceedings, the Appellant referred to the policy directions of the Respondent in an assortment of publications including Tax Briefings and statements of practice with regard to the payment of travel and subsistence expenses without deduction of tax. The Appellant argued that the Respondent had resiled from

that stated position and as a consequence, the Appellant has been prejudiced by the failure of the Respondent to apply the law consistently.

119. Counsel for the Respondent advised that the jurisdiction of the Appeal Commissioners does not extend to a review of the administrative actions of the Respondent or indeed to commercial or economic policy issues notwithstanding any purported inequity. As such, my role should be confined to the interpretation and application of the statutes with the assistance of relevant jurisprudence. I do not dispute this argument.

120. In regard to the raising of tax estimates and assessments on both Company D and the Appellant, respectively, the Appellant cited the European Convention on Human Rights. In particular the Appellant mentioned the optional Seventh Protocol to the Convention, Article Four(which has been ratified by Ireland), protects against double jeopardy. Again, the jurisdiction of the Appeal Commissioners does not extend to a review of the administrative actions of the Respondent which may breach the European Convention on Human Rights.

121. In the light of the above, I have limited myself to determining the extent to which the payment of expenses by the Company to the Appellant constituted income falling within the charge to tax pursuant to TCA, sections 112, 117 or 118 and thereafter consider whether there is a statutory entitlement to deduct prescribed expenses against the Appellant's income in accordance with TCA, section 114.

Charge to Tax on Company D

122. The Respondent asserted that pursuant to section 112 TCA 1997, section 117 TCA 1997 and section 118 TCA 1997, combined with the PAYE Regulations under Chapter 4 Part 42 TCA1997 requires the deduction of tax by the employer on the majority of the payments made by Company D to the Appellant. Section 117 is a the deeming provision which taxes any sum paid in respect of expenses as perquisites chargeable to tax under Schedule E.

123. While "perquisites" are not statutorily defined, the House of Lords in *Owen v Pook* 1970 A.C. 244, considered whether the reimbursement of employment expenses incurred by the taxpayer fell within the charge to tax under the UK equivalent of TCA, section 112, as a perquisite of employment.

124. Notwithstanding that the reimbursement of travel and subsistence by a body corporate to any of its directors or employees may not provide any personal benefit to such individuals, the deeming provision contained within TCA, section 117 treats such payments to be perquisites for the purposes of TCA, section 112.

125. The Revenue Commissioners have an established practice, as set out in various tax briefings and Statement of Practice SP – IT/2/07, whereby the reimbursement of expenses of travel and subsistence made by an employer to an employee which meet certain criteria, may by concession only, be made without deduction of tax. The Respondent has argued that this is a concessional treatment as provided for under section 849 TCA 1997, being necessary and expedient for effective and efficient administration by employers, employees and the Revenue Commissioners and is explained in tax briefing 04/2013:

126. I accept as correct, the Respondent's argument that the jurisdiction and powers of the Appeal Commissioners are set out in statute in Part 40A TCA 1997 and that the Appeal Commissioners do not have jurisdiction to review the operation or withdrawal by the Respondent of concessionary treatment such as that set out in Statement of Practice SP – IT/2/07.

127. Accordingly, the Respondent is entitled to raise estimates of PAYE etc. under section 990 TCA 1997 due by Company D in respect of business expense payments paid to the Appellant, irrespective of whether or not the Appellant is entitled to make a claim under the provisions of section 114 TCA 1997.

Deductibility of Expenses

128. Notwithstanding that the reimbursement of travel and subsistence by a body corporate to any of its directors or employees may not provide any personal benefit to such individuals, the deeming provision contained within TCA, section 117 treats such payments to be perquisites for the purposes of TCA, section 112. Therefore, while such expenses fall within the charge to tax, TCA, section 117 contains a corresponding entitlement to claim a deduction for expenses that were incurred i) necessarily in the case of travelling expenses and ii) in the case of non-travelling expenses, wholly, exclusively and necessarily, in the performance of the duties of the office or employment pursuant to TCA, section 114.

129. The rules governing the procedure for deducting expenses against employment income are set out in TCA, section 114 and provide:

> *"Where the holder of an office or employment of profit is <u>necessarily</u> obliged to incur and defray out of the emoluments of the office or employment of profit expenses of <u>travelling</u> in the performance of the duties of that office or employment,*
>
> *or otherwise to expend money <u>wholly, exclusively and necessarily</u> in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed".* (emphasis added)

130. In order to avoid a myriad of claims under TCA, section 114, the Revenue Commissioners published guidelines dispensing with the statutory obligation of a formal claim process. In the Respondent's publications, specifically 'SP IT/2/07' paragraph 2.1 it states:

> *"there exists a long-standing practice under which employers may reimburse tax-free to office holders and employees the* expenses *of travel (and subsistence relating to that travel) subject to certain conditions being fulfilled."*

Travel expenses

131. The entitlement to the deduction for travel expenses is with reference to the first limb of the rules governing expenses and requires that a person "*is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties".*

Travel related Subsistence expenses

132. Commissioner Kennedy in 20TACD2018 stated:

> *"there has been no substantial consideration of the allowability of subsistence payments in this (* Ireland*) jurisdiction, regard can be had to Ricketts v Colquhoun 10 TC 118 where Viscount Cave, L.C. in disallowing subsistence payments observed at page 134:*
>
> > *"A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work, so that he must find board and lodging away from home, that is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance."*
>
> *This interpretation is endorsed in subsequent jurisprudence opened by the Respondent. To this extent and as noted by Vinelott J. in Elderkin v Hindmarsh [1988] STC 267 at page 270, the UK equivalent of TCA, section 114 is so stringent "that in many, if not in most, cases the subsection gives the taxpayer little or no relief."*
>
> *Highlighting the strict nature of expense deductibility, Rowlatt J. in Nolder v Walters 15 TC 380, observed at page 388:*

"his board and his lodging in a sense, eating and sleeping, are the necessities of a human being, whether he has an office, or whether he has not, and therefore, of course, the cost of his food and lodging is not wholly and exclusively laid out in the performance of his duties, but the extra part of it is."

In considering that judgment, Maguire, Income Tax 2018, Butterworths at paragraph 10.302 expresses the view that:

"in general, subsistence costs should be allowed if they are regarded as an inherent element of the expense of travelling. In Nolder v Walters, Rowlatt J observed:

> *I think it always has been agreed, that when you get a travelling office, so that travelling expenses are allowed, those travelling expenses do include the extra expense of living which is put upon a man by having to stay at hotels and inns, and such places, rather than stay at home.*

The question of hotel expenses incurred while travelling on the employer's business raises a further question related to 'home savings'. While Rowlatt J accepted that the extra expense which the employee had to incur on hotel, etc expenses were deductible under Sch E, he considered that the cost of food and lodging was not wholly and exclusively laid out in the performance of the duties, but only the extra part of the cost. This view seems to overlook the fact that the Sch E expenses rule does not impose a 'wholly and exclusively' requirement in respect of travelling expenses. Further, it seems likely that if the 'wholly and exclusively' rule did apply, the duality principle would strictly mean that no part of the cost should be allowed"

133. The current arrangements operated by the Revenue Commissioners under its published Guidelines "SP IT/2/07" strongly suggest that they see qualifying subsistence payments associated with travel as "travelling expenses" for the purposes of TCA 114. I believe such

an interpretation to be correct. If that is the case then such costs would fall into the first limb of section 114 which requires those costs to be "necessarily" incurred in the performance of the employment.

134. Based on a detailed consideration of the jurisprudence, the Respondent argued that the Appellant's normal place of work was at the site of the end user enterprise. As such, the Appellant was not entitled to claim 100% of the travel and subsistence expenditure representing the "home to work" element.

Employment duties of the Appellant

135. So what were the employment duties of the Appellant which caused him to incur expenses related to Company D and in respect of which he sought reimbursement from Company D?

136. The principal activity of Company D, whose registered office was at [redacted] from 2008 to 2011, as described in its 2008 financial statements, is that of architectural and engineering activities and related technical consultancy. The Appellant was the sole employee of Company D. His role was that of managing director of Company D. He also held the office of a director in Company D. The sole revenue earning contract of Company D was that between itself and the Agency Company. It was the Appellant's role as director and sole employee of the company to execute this contract on behalf of Company D.

137. What was the nature of the contract between Company D and the Agency Company? The contract documentation put before me during proceedings originated in the years 2004 and 2005. By the time we get to the years under appeal, the contract had evolved and changed somewhat. Originally, back in 2004/2005, it was envisaged that the Appellant as an employee of Company D would undertake project engineering services for the Agency Company at the behest of the Pharma Company at its manufacturing facility location in

[redacted]. From the testimony of the Appellant, in the early years of the contract, a significant amount of the work was undertaken at his home office with less work actually taking place at the Pharma company site. Over time due to the improving relationship between the Appellant and the Pharma Company, additional responsibility was given to the Appellant in relation to the affairs of the Pharma Company.

138. This resulted in the Appellant travelling to and spending considerable amount of time at the site of the Pharma Company in [redacted]. This also resulted in less time spent in his home office undertaking work. When attending the Pharma Company site the Appellant would use a "hot desk" meaning that he was not assigned a particular location within the premises of the Pharma Company. In the years under appeal, there was also considerable amount of travel undertaken by the Appellant on behalf of the Pharma Company.

139. Often such travel would include consultation and discussions, at sites apart from the Pharma Company site, with other engineering and other specialists associated with the equipment used in the Pharma Company's processes, upon which the Appellant was advising during project installation, testing and commissioning.

140. Where was the Appellant's place of work? This question is pertinent as the Respondent relied heavily on its assertion that the Appellant's place of work was at the site of the Pharma Company. If this assertion is correct, the Respondent sought to use case law to disallow the expenses of travelling to and from the Pharma Company sites in establishing the Appellant entitlement for claim under section 114.

141. The case of *Ricketts v Colquhoun* 10 TC 118 appears to be the cornerstone of case law invoked by the Respondent. This case does not rest easily with modern day employee work practices such as the use of technology, remote hubs and working from home. Neither does it rest easily with the circumstances in this particular case. In *Ricketts v Colquhoun* the situation was that of a directly employed employee travelling from home to his employer's workplace to carry out the tasks of employment.

142. In the current appeal we have a situation where there is no contractual relationship per se between the Appellant as an employee of Company D and the site where he undertakes his work in the Pharma Company. When the Appellant arrives in the Pharma Company site he is not an employee, he has no entitlement to a fixed place within the physical infrastructure or management organisation of Pharma Company. He uses a transient "hot desk". He is acting on behalf of Company D to fulfil a contract with the Agency Company. It is true to say that when he is located at the Pharma Company site he is deployed there, but in my view it would be incorrect to say that his place of work is the Pharma Company site in the sense understood in the case of *Ricketts v Colquhoun.* If I am wrong in this view then, at a minimum, it is true to say that his place of work in not solely located at the Pharma Company site.

143. We know from the testimony of the Appellant that the Pharma Company was prepared to remunerate the Agency Company, which in turn remunerated Company D (in the form of approved chargeable hours) in respect of the time spent by the Appellant in fulfilling the contract from the time of leaving his home to work at the Pharma Company site (or other designated benchmark sites at other pharma companies using comparable equipment) until he returned home. During the hearing, the Respondent challenged this as the original contract set up between the Agency Company and Company D in 2005 did not explicitly provide for this and that contract provided that any changes to the contract must be in writing.

144. I accept what the Respondent said about the wording of the original contract but I have also established as a material fact, through the submissions and testimony of the Appellant, that the contract in 2005 was later changed to allow Company D bill for the Appellant's time working on the Pharma Contract, from the time he left home until he returned home while working on the Pharma Contract.

145. The Pharma Company, under these new revised contract terms, clearly did not see the Appellant's place of work as being confined to their site. In addition, we know from the

testimony of the Appellant that he undertook a significant amount of travel away from the Pharma site, both within Ireland and overseas.

146. My review of the expense claims made by the Appellant against Company D suggests that he travelled to the Pharma site twice a week. Some weeks his travel to the site was more and sometimes less.

147. In his determination in 20TACD 2018, Commissioner Kennedy gave a very helpful review of the Irish jurisprudence in relation to the deductibility of Schedule E expenses and in particular the extent to which the Irish Courts sought to rely on the case of *Ricketts v Colquhoun* 10 TC 118. While I have questions about the relevance of this case in the context of today's modern technologically based business work practices, nevertheless, I am bound to by the decision of higher Irish Courts. In that regard reference was made to *Ricketts* in *H F Kelly (Inspector of Taxes) v Commandant Owen Quinn* [1961] IR 488. In the High Court, distinctions were drawn between TCA, section 81, the provision governing the deductibility of expenses for self-employed persons and TCA, section 114 (which imposes the condition of the expense being "necessarily "incurred), where commencing at page 493, Kenny J. observed:

> *…By this I mean that the Court has to consider whether the person holding the office or employment is obliged, by the terms and duties of that office or employment, to expend the monies the deduction of which is claimed. The question is not whether the person holding thought that he had to, or ought to, expend that sum.*
>
> *…The test is not whether the employer imposes the expense, but whether the duties do, in the sense that, irrespective of what the employer may prescribe, <u>the duties cannot be performed without incurring the particular outlay.</u> This result follows in my opinion from the decision of the House of Lords in Ricketts v Colquhoun [1926] AC11…*(Emphasis added)

148. Under the evolved contract, Company D was entitled to bill the Agency Company / Pharma Company for the time spent by the Appellant travelling to and from his

home to the sites required by the Pharma Company. The travel time was an integral part of the contract. Company D could not charge the Agency Company/ Pharma Company for the travel time unless travel time was incurred. This means that in executing the Company D contract, the Appellant could not perform his employment contract unless he incurred the travelling costs and related subsistence associated with the contract Company D had with the Agency Company / Pharma Company. In other words, he could not perform his employment contract "*without incurring the particular outlay*".

149. If I am wrong in treating subsistence costs associated with travel as travel costs, as usually understood, then it would be necessary to examine those costs under the second rule with section 114.

150. Non-travel related expenses are distinguished from travel related expenses within section 114. The second limb of the rule concerning employment expenses requires strict conformance with the obligation for the expense to be incurred "*wholly, exclusively and necessarily in the performance of those duties".*

151. The condition of "exclusively" within the second limb of TCA 114 raises the "duality of purpose" issue in context of employment expenses. This issue has been considered on numerous occasions and most recently by the High Court England and Wales in *Revenue & Customs Commissioners v Banerjee* 80 TC 205, where Henderson J observed at 216:

> *"Wrapped up in this second requirement are a number of important distinctions. Expenditure which is not incurred in the actual performance of the taxpayer's duties, but merely in order to put the taxpayer in a position to perform his or her duties, is not deductible. Again, any duality of purpose is fatal: that is the force of the word "exclusively".*

152. In *Revenue & Customs Commissioners v Banerjee* [2010] EWCA Civ 843 there was a majority decision in the appeal of that decision to the UK Court of Appeal. Hooper LJ . said at paragraphs 66 to 69 :

> *"Rimer and Pitchford LJJ (* the other two Appeal Court Judges*) disagree as to whether the commissioners erred in law in finding that she incurred the expenditure 'exclusively' in the performance of her duties as an employee. Rimer LJ concludes that they did not. Pitchford LJ concludes that they did…*
>
> *Pitchford LJ concludes, on the findings of the commissioners, that the taxpayer had a second purpose, namely to obtain professional self-advancement and that the commissioners erred in law in not recognising that. Like Rimer LJ, I do not agree.*
> *It is also clear law that it does not follow from the fact that a taxpayer receives an incidental personal benefit from the expenditure, that the obtaining of the benefit necessarily becomes a 'purpose' which defeats the 'exclusivity' requirement. If the law were otherwise it is unlikely that any (honest) taxpayer would be able to satisfy the 'exclusivity' requirement."*(Emphasis added)

This judgement appears to update and qualify to some extent the principle of "exclusivity" set out in the *Ricketts v Colquhoun (H.M. Inspector of Taxes)* [1926] AC 1. It may also support the Revenue justification for their current treatment of approved subsistence payments under their current Statements of Practice.

153. It is moot and not something I need consider, whether the "necessarily" condition would be breached, were Company D not entitled to bill for the Appellant's travelling time. The Appellant, as the sole employee of Company D, was the only person capable of executing the sole contract held by Company D as he was the chosen contractor of the Pharma Company. The House of Lords felt that an exception could be made for the similar circumstances of Mr. Taylor in the *Taylor v Provan [1974] STC 168* case. Lord Morris at page 177 commented as follows:

> *"The office or the employment was very special. There was probably no-one else who could have filled it. It was an office created to be held by one particular person."*

154. The Respondent has allowed, as an expense not subject to PAYE etc., vouched travel and subsistence expenses approved by the Pharma Company, mainly related to foreign travel. However, the Respondent has sought to disallow those expenses paid by Company D to the Appellant which were not reimbursed to Company D through the contract with the Agency Company / Pharma Company. In my view, the approval or non-approval by the Pharma Company of certain expenses is not relevant to my determination. I have formed this view because the Pharma Company was prepared to remunerate time invested by the Company D/Appellant travelling to and from its sites but was not prepared to cover explicit direct costs associated with that travel.

155. Accordingly it appears to me that the Pharma Company, for its own good reasons, unbeknown to me, chooses to approve certain costs associated with foreign travel under the contract but not approve other costs associated with Irish travel. For that reason, I believe that nothing should be inferred from their refusal to reimburse domestic Irish travel and related subsistence costs incurred by the Appellant/Company D.

Quantum of deduction under section 114

156. The Respondent's position in relation to the various expenses within the financial statements of Company D can be summarised as follows:

> The Respondent did not dispute the allowability of expenses which were reimbursed to Company D by its client, the Agency Company / Pharma Company, and which Company D credited to the Appellant. In computing the assessments and estimates that are the subject matter of this appeal, an aggregate of €25,799

was allowed in respect of such payments, although during the hearing the Respondent conceded this should be €32,024.

Unvouched expenses

The Respondent sought to disallow all those expenses in the period 2008 to 2011. These were unvouched flat rate expenses for mileage or subsistence. Respondent argued that the Appellant had not provided any evidence to corroborate any of the particular transactions or journeys contained in these sheets. The Respondent asserted that there are multiple dates in which there is clear evidence that the Appellant was at a location other than that listed in the expense sheets, including:

- instances where the evidence of the Company D Visa card statements conflicted with the purported location/journey set out in the expense sheet
- instances where the evidence of the Appellant's wife's debit card usage(time stamped ATM /POS transactions) conflicts with the expense claims.

The Respondent said there were numerous instances of journeys purportedly undertaken by the Appellant where travel and subsistence was claimed on days when it would appear that the Appellant was not working, as no hours were billed for those dates.

Vouched Expenses

Vouched expenses were analysed by the Appellant under the following headings;
- Foreign travel;
- Client meetings/presentations
- Sundry allowable (Christmas related expenditure / other)
- Duplicated Claims / non-allowable expenditure

157. In the period under appeal, the Respondent did not dispute the foreign travel vouched expenses that were recharged on invoices relating to foreign travel in the performance of the duties of the Appellant's employment. The Respondent sought to disallow a number

of foreign trips that were not recharged to clients and which appeared to them to be personal in nature, albeit the company credit card was used to pay for these trips.

158. During the appeal period, there was expenditure relating to client meetings and presentations. The Respondent argued that much of this expenditure was incurred on days that the Appellant was otherwise not billing hours or in all likelihood not working and were personal in nature.

159. The Appellant, acknowledged during the hearing and in correspondence before the hearing that certain expense items classed as "duplicate" were non-allowable.

160. The following table sets out the quantum of expenses shown in the financial statements of Company D for the years under appeal. It also shows the amount of expenses which the Respondent sought to disallow as legitimate business expense and on which the PAYE/PRSI estimates, under appeal, were based:

Respondent's Original Position	**2008**	**2009**	**2010**	**2011**	**Total**
	€	**€**	**€**	**€**	**€**
Travel & Subsistence charged in Financial Statements	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Revenue	(25,438)	(32,837)	(37,171)	(41,951)	(137,397)
Allowable under section 114 by Revenue	1,983	4,642	14,222	4,952	25,799

161. The next table below shows the amount of expenses which the Respondent sought to disallow by the end of the appeal proceedings.

Respondent's final position	**2008**	**2009**	**2010**	**2011**	**Total**
	€	**€**	**€**	**€**	**€**
Travel & Subsistence charged in Financial Statements	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Revenue	(25,541)	(32,290)	(34,288)	(39,053)	(131,172)
Allowable under section 114 by Revenue	1,880	5,189	17,105	7,850	32,024

162. Appendices 1-5 set out in more detail the make-up of the disallowed expenses, per the Respondent, totalling €131,172.

163. The following table shows the amount of expenses which the Appellant was prepared to concede where not allowable as bona fide business expenses by the end of the hearing proceedings.

Appellant's Position	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Financial Statements	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Appellant	(3,520)	(8,748)	(9,328)	(10,750)	(32,346)
Allowable under section 114 per the Appellant	23,901	28,731	42,065	36,153	130,850

Appendices 1-5 set out a more detailed analysis of the disallowed expenses, per the Appellant, totalling €32,346.

164. As you can see there is a significant difference between the Respondent's and the Appellant's positions.

165. During the hearing the Appellant and Agents acting for Company D conceded that some of the travel and subsistence expenses reimbursed to the Appellant in the years 2008 to 2011 may not have been associated with the contract for the Pharma Company. Also, there appears to have been some imprecision in the record-keeping of Company D which became apparent when the Appellant was cross examined by the Respondent. For example the higher overnight subsistence rate, prescribed under the Revenue statement of Practice, was claimed on a number of occasions when in fact the number of hours away from home recorded suggested that the lower day rate subsistence allowance should have been claimed. Also it was conceded during proceedings that there was overstatement of

mileage distances in some instances and hence an overstatement of mileage allowances claimed by the Appellant.

166. During the hearing, a key argument of the Respondent was the lack of internal control in the record-keeping of Company D. In the Respondent's view, it was the absence of proper records which was a factor in their treating the payment of the travel / subsistence payments as falling outside the concessional Statement of Practice arrangements operated by Revenue. I accept that there was a degree of carelessness in respect of the maintenance of records kept by Company D. Nevertheless, I am of the view that it is difficult to operate an entirely satisfactory system of control in a one-man company such as Company D. I am also of the view that the detail timesheets maintained by the company in support of its invoicing under the contract, represents a significant and material record of the activities of Company D in relation to its contract. For that reason, coupled with a credible testimony of the Appellant during the hearing, I do not accept that there were no proper records but I do accept that there was some carelessness in the keeping of those records.

167. Because of the imprecision in the maintenance of the detail records associated with travel overnight and payable subsistence, and based on the estimates and examples of same put forward at the hearing, I believe, on the balance of probabilities, that 20% of travel and 25% of subsistence expenses should be disallowed relief under section 114.

168. For the reasons stated above, I believe the travel and subsistence costs incurred by the Appellant and reimbursed to him by Company D during the appeal period were in large part necessarily incurred by the Appellant in the performance of his employment duties for Company D.

169. When it comes to tax exemptions and tax reliefs, the Respondent correctly pointed out to me that it is for the taxpayer to show that an exemption or relief from tax applies. This approach was summarised by Kennedy CJ in *Revenue Commissioners v Dooley (1933) IR 750:*

> *"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the act under consideration, then exemption from the tax must be given expressly and in clear and unambiguous terms within the letter of the statute as interpreted with the assistance of the ordinary cannons for the construction of statutes. The court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and express terms, except for some good reason from the burden of a tax thereby imposed on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing act as interpreted by the established canons of construction so far as possible"*

170. The Appellant, when cross examined about the mileage expense claims and distances between his home and certain locations, including the Pharma Company site, in Ireland, conceded that there were some errors of overstatement of distances.
Also, during cross examination it became evident that there was some imprecision by the Appellant in calculating which subsistence claims qualified for the overnight rate and the day rate under the conditions specified by the Revenue Statement of Practice for such expense claims.

171. For that reason, I have restricted the Appellant's entitlement to mileage expenses to 80% of the amount claimed in the Financial Statement of Company D in order to determine the amount he is permitted, on the balance of probabilities, to claim under section 114 TCA 1997.

172. In the case of travel subsistence, I have restricted the Appellant's entitlement to mileage expenses to 75% of the amount claimed in the Financial Statement of Company D in order to determine the amount he is permitted, on the balance of probabilities, to claim under section 114 TCA 1997.

173. In the case of vouched expenses, covering' vouched' expenditure on foreign travel and related expenditure, client meetings/presentations, and sundry Christmas /gifts/other, reimbursed by Company D to the Appellant but not recovered by Company D under its contract with the Agency Company / Pharma Company, I have disallowed significant amounts as outlined in Appendices 2 to 5, largely with the agreement of the Appellant, following cross examination by the Respondent.

174. I have set out in Appendix1 a summary of the position held by the Appellant and the Respondent at the end of the hearing, together with my determination. Appendices 2 to 5 show my determination relating to the Appellant, quantified for each year.

DETERMINATION

175. The deeming provisions contained in TCA, section 117 treat the payment of expenses by a body corporate to any of its directors or employees as a perquisite for the purposes of TCA, section 112, notwithstanding that no personal benefit may have been derived. The original PAYE / PRSI estimates amounting to €137,397 as follows:

Year of Assessment	Travel & subsistence payments made to the Appellant
2008	€25,438
2009	€32,837
2010	€37,171
201 I	€41,951
Total	**€137,397**

were later re-calculated by the Respondent at the hearing to be € 131,172 as follows :

Year of Assessment	Travel & subsistence payments made to the Appellant
2008	€25,541
2009	€32,290
2010	€34,288
201 I	€39,053
Total	**€131,172**

These revised estimates were calculated by the Respondent in the table below as follows:

	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Company D Financials	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Revenue	(25,541)	(32,290)	(34,288)	(39,053)	(131,172)
Treated as qualifying for relief under section 114 TCA 1997	1,880	5,189	17,105	7,850	32,024

176. As I am bound by statute and have not been given any discretionary powers, I determine that the Notice of Estimation dated 25th February 2014 raised against Company D for PAYE be amended and be based on the recalculated total of €131,172 as outlined above.

177. I determine that the Appellant, for the years 2008 to 2011, should be afforded relief under Section 114 in accordance with the following table:

	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Company D Financials	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Determination	(7,281)	(12,393)	(13,355)	(15,842)	(48,871)
Treated as qualifying for relief under section 114 TCA 1997	20,140	25,086	38,038	31,061	114,325

178. Although I have no jurisdiction, within this appeal, on the matter, it is my expectation that the Respondent will honour it commitment at the hearing, to ensuring no element of double tax assessment, contrary to TCA section 959F, arises in their administration of my determinations, relating to any tax due by or to Company D and the Appellant under this appeal.

179. This appeal is determined in accordance with TCA, section 949AK and 949AL.

PAUL CUMMINS
TAX APPEALS COMMISSIONER
Designated Public Official

30 June 2021

Appendix 1

Respondent's Position at end of Hearing

	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Company D Financials	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Revenue	(25,541)	(32,290)	(34,288)	(39,053)	(131,172)
Treated as qualifying for relief under section 114 TCA 1997	1,880	5,189	17,105	7,850	32,024

Appellant's Position at end of Hearing

	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Company D Financials	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Appellant	(3,520)	(8,748)	(9,328)	(10,750)	(32,346)
Treated as qualifying for relief under section 114 TCA 1997	23,901	28,731	42,065	36,153	130,850

Determination

	2008	2009	2010	2011	Total
	€	€	€	€	€
Travel & Subsistence charged in Company D Financials	27,421	37,479	51,393	46,903	163,196
Treated as Appellant's Income by Determination	(7,281)	(12,393)	(13,355)	(15,842)	(48,871)
Treated as qualifying for relief under section 114 TCA 1997	20,140	25,086	38,038	31,061	114,325

Appendix 2

Disallowed by Determination	**2008**	
	€	
Unvouched		
Unvouched Mileage (Revenue approved rates)	2,047	Note 1
Unvouched Subsistence (Revenue approved rates)	2,458	Note 2
Vouched		
Client Meetings / Presentations	968	Note 3
Foreign Travel / Hotel / Subsistence / Taxi	124	Note 4
Sundry Allowable	336	Note 5
Non-Allowable	1,349	Note 6
	7,281	

Notes

1. 20% of mileage claimed has been disallowed
2. 25% of subsistence claimed has been disallowed
3. 50% of expenses claimed have been disallowed
4. The Appellant and Respondent accepted that this amount should be disallowed
5. The Appellant and Respondent accepted that this amount should be disallowed
6. The Appellant and Respondent accepted that this amount should be disallowed

Appendix 3

Disallowed by Determination	**2009**	
	€	
Unvouched		
Unvouched Mileage (Revenue approved rates)	1,451	Note 1
Unvouched Subsistence (Revenue approved rates)	3,064	Note 2
Vouched		
Client Meetings / Presentations	1083	Note 3
Foreign Travel / Hotel / Subsistence / Taxi	5616	Note 4
Sundry Allowable	0	Note 5
Non-Allowable	1,179	Note 6
	12,393	

Notes

1. 20% of mileage claimed has been disallowed
2. 25% of subsistence claimed has been disallowed
3. The Appellant accepted that this amount should be disallowed
4. The Appellant accepted that this amount should be disallowed
5. The Appellant and Respondent accepted that this amount should be disallowed
6. The Appellant and Respondent accepted that this amount should be disallowed

Appendix 4

Disallowed by Determination	**2010**	
	€	
Unvouched		
Unvouched Mileage (Revenue approved rates)	1,659	Note 1
Unvouched Subsistence (Revenue approved rates)	3,364	Note 2
Vouched		
Client Meetings / Presentations	1752	Note 3
Foreign Travel / Hotel / Subsistence / Taxi	5379	Note 4
Sundry Allowable	53	Note 5
Non-Allowable	1,148	Note 6
	13,355	

Notes

1. 20% of mileage claimed has been disallowed
2. 25% of subsistence claimed has been disallowed
3. The Appellant accepted that this amount should be disallowed
4. The Appellant and Respondent accepted that this amount should be disallowed
5. The Appellant and Respondent accepted that this amount should be disallowed
6. The Appellant and Respondent accepted that this amount should be disallowed

Appendix 5

Disallowed by Determination	**2011 €**	
Unvouched		
Unvouched Mileage (Revenue approved rates)	1,485	Note 1
Unvouched Subsistence (Revenue approved rates)	4,498	Note 2
Vouched		
Client Meetings / Presentations	1405	Note 3
Foreign Travel / Hotel / Subsistence / Taxi	6024	Note 4
Sundry Allowable	0	Note 5
Non-Allowable	2,430	Note 6
	15,842	

Notes

1. 20% of mileage claimed has been disallowed
2. 25% of subsistence claimed has been disallowed
3. The Appellant accepted that this amount should be disallowed
4. The Appellant and Respondent accepted that this amount should be disallowed
5. The Respondent had sought to disallow €400
6. The Appellant and Respondent accepted that this amount should be disallowed.

The Appeal Commissioners have been requested to state and sign a case for the opinion of the High Court under Chapter 6, Part 40A of the Taxes Consolidation Act, 1997.