



37TACD2021

BETWEEN/

REDACTED

Appellant

And

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessments to income tax in relation to the tax years of assessment 2010 and 2011. The Appellant was a proprietary director and 99% shareholder of **REDACTED** (hereafter referred to as “the company”).
2. The appeal, is pursuant to section 997A(8) of the Taxes Consolidation Act 1997, against a decision of the Respondent to deny a credit for the income tax deducted from the Appellant’s emoluments but not remitted to the Respondent by a company in which the Appellant held a material interest.
3. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.

Background and Agreed Facts

4. The Company entered into voluntary liquidation on 19th September 2012.



5. Mr REDACTED was a Director of the company for the years 2010 and 2011. He held a 99% shareholding in the company.
6. Mr REDACTED, in his capacity as a Director of the company is a person to whom Section 997A TCA 1997 applies.
7. Mr REDACTED was in receipt of a salary from the company of €47,597 for the year 2010 and €49,877 for the year 2011.
8. It is accepted that in accordance with its obligations under Section 112 TCA 1997 the company did deduct from Mr REDACTED – in 2010 PAYE Tax of €6,374.65 and, in 2011 PAYE Tax of €8,829.98.
9. The amount of Employers Tax that remain outstanding to Revenue by the company are for 2010 €26,183.45 and for 2011 €27,458.10.

Legislation

10. Taxes Consolidation Act 1997 (TCA), section 983 defines ‘emoluments’, as:
“anything assessable to income tax under Schedule E, and references to payments of emoluments includes references to payment on account of emoluments”.
11. TCA, section 985 provides that:
“On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this Chapter, be deducted or repaid by the person making the payment notwithstanding that–

(a) when the payment is made no assessment has been made in respect of the emoluments, or
(b) the emoluments are in whole or in part emoluments for some year of assessment other than that during which the payment is made”.
12. Finance Act 2005 inserted section 997A into the Taxes Consolidation Act 1997 to deny a credit for tax deducted from the emoluments paid to certain directors and employees in the absence of documentary evidence that confirms that the tax deducted from those emoluments was remitted to the Collector-General. The relevant provisions provide:



“(1) (a) In this section –

“control” has the same meaning as in section 432; “ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company.

(b) For the purposes of this section

(i) a person shall have a material interest in a company if the person, either on the person’s own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

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

(2) This section applies to a person to who, in relation to a company (hereafter in this section referred to as “the company”), has a material interest in the company.

(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given against the amount of tax chargeable in any assessment raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments)(Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.”

13. The appeal procedures are governed by subsection 8 which state:

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

Submissions



14. The Appellant submitted that the company went into financial difficulty when a client left owing a very large amount of money to the company.
15. The Appellant further submitted that a solicitor advised him that his only option was to obtain an injunction on the property of the defaulting client.
16. The Appellant advised that the outstanding amount due from the client put severe pressure on the company and he felt at that stage the only way forward was to liquidate the company.
17. The Appellant further advised that the liquidator organised everything including a creditors meeting, which the Respondent failed to attend.
18. The Appellant submitted that the solicitor and the liquidator advised him all went well at the creditors meeting and that he would not be hearing further from anyone including the Respondent.
19. The Respondent submitted that Mr REDACTED filed self-assessment returns of income for the years ended 31 December 2010 and 2011 claiming credit for the full amount of tax deducted by the company in respect of emoluments paid to him in 2010 and 2011.
20. The Respondent further submitted the details of the Appellant's emoluments and tax deducted in accordance with the P35s filed by the company were:

2010 Gross Pay €47,597 Tax deducted €6,374.65

2011 Gross Pay €49,877 Tax deducted €8,829.98
21. The Respondent outlined that on 2nd September 2013 Revenue raised an assessment to income tax in respect of the tax year 2010, in the sum of €6,374.65 and for the year 2011, in the sum of €8,829.98 (i.e. withdrawing tax credited to the Appellant), pursuant to the provisions of Section 997A TCA 1997.
22. The Respondent advised the Tax Appeals Commission that the Appellant appealed these assessments on 30th October 2013. The late appeal was accepted by the Respondent and acknowledged on 21st November 2013.
23. The Respondent in support of its position quoted from the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal*



Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”

24. The Respondent also quoted from what Gilligan J. stated in the case of *TJ v Criminal Assets Bureau* [2008] IEHC 168, “*The whole basis of the Irish taxation system is developed on the premise of self-assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that arose within the relevant tax period*”. “*The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector’s judgment ought to be charged on that person.*”
25. The Respondent also cited a number of cases from the Tax Appeals website www.taxappeals.ie in which the TAC issued determinations in similar cases.

Analysis and Findings

26. Section 997A(2) provides that “*This section applies to a person to who, in relation to a company (hereafter in this section referred to as “the company”), has a material interest in the company.*’ Thus the provision applies to proprietary directors. Section 997A(1)(b) provides as follows; “*[(1)(b) For the purposes of this section— a person shall have a material interest in a company if the person, either on the person’s own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and the question of whether a person is connected with another person shall be determined in accordance with section 10.*’
27. Section 997A(3) provides: “*Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies [shall be given against the amount of tax chargeable in any assessment] raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.*’
28. The Appellant did not dispute the fact that he was a proprietary director and that a deficit arose in relation to tax remitted by the company regarding his emoluments for the tax years of assessment 2010 and 2011.



29. Section 997A(3) provides that *'no credit for tax deducted shall be given against the amount of tax chargeable in any assessment raised on the person ... unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General'*. The Appellant did not dispute the deficit which arose in relation to the failure of the company to remit income tax in relation to his emoluments for the tax years of assessment, 2010 and 2011. The wording of the statutory provision is clear in that it provides that *'no credit shall be given'* in the circumstances which arise in the within appeal. Thus I do not consider that I have discretion to depart from the clear wording of s.997A and as a result, I must determine this appeal in favour of the Respondent.
30. Section 997A (4) provides: *'Where the company remits tax to the Collector-General which has been deducted from emoluments paid by the company in a year of assessment, the tax remitted for that year of assessment shall be treated as having been deducted from emoluments paid to persons other than persons to which this section applies in priority to tax deducted from persons to whom this section applies'* (Emphasis added)
31. The assertion that there was an entitlement to claim a credit for the tax deducted from the Appellant's emoluments by the Company notwithstanding that such taxes were not remitted to the Respondent fails to recognise that companies, as inanimate bodies, can only act through the actions of their directors and in accordance with their contractual and fiduciary obligations and powers vested in the board of directors in accordance with the Articles of Association. Furthermore, while tax was deducted from the Appellant's emoluments, a decision was made to employ those funds elsewhere as opposed to the intended purpose of discharging those taxes and therefore favoured another cause or creditor to the detriment of the Respondent.
32. The demonstrable effect of section 997A is to deny persons in positions of control and influence over a company's business activities from claiming a credit for unpaid taxes that ought to have been deducted and remitted by such companies to the Respondent. The effect of the section is to secure the payment of taxes from the emoluments derived from such individuals.
33. For the reasons outlined above, the provisions of section 997A of the Taxes Consolidation Act 1997 do not constitute any kind of punishment or deterrent in relation to the Companies Act. Furthermore in fact, its scope does not serve as a deterrent but a collection mechanism to secure tax arising on emoluments paid to prescribed individuals responsible for discharging the company's liabilities. It ensures that such individuals cannot abdicate the responsibility to pay income tax on their emoluments to an inanimate entity.



34. Finally, section 997A of the Taxes Consolidation Act 1997 was introduced by an Act of the Oireachtas, the effect of which gives statutory authority to deny prescribed individuals from claiming a credit for the income tax deducted from their emoluments but not remitted to the Respondent by companies in which those individuals hold a material interest.

35. I am of the view that the statutory wording is clear and precise and that there is no ambiguity. As such the interpretative approach to be applied is a literal one taking into account the jurisprudence in relation to the interpretation of taxation statutes based on a long line of authorities including *inter alia*, *Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.

Determination

36. I have determined that the assessments for the years 2010 and 2011 are correct and the assessments stand. As such, this appeal is therefore determined in accordance with Taxes Consolidation Act 1997, section 949AK.

CHARLIE PHELAN
APPEAL COMMISSIONER
14 JANUARY 2021

