



09TACD2022

**BETWEEN/**



**Appellants**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against an assessment to income tax in accordance with section 997A of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The assessment in relation tax year of assessment 2017, totals €3,433.07.
2. The Appellants are jointly assessed and Mr. [REDACTED] is the assessable spouse. In 2017, Mrs. [REDACTED] was a director and 50% shareholder of [REDACTED] Ltd. (the 'company'). Mrs. [REDACTED] was a person with a material interest in the company in accordance with the provisions of section 997A TCA 1997, and this was not in dispute as between the parties.
3. In 2017, Mrs. [REDACTED] received a salary of €24,855 from the company. The original notice of assessment dated 17 October, 2018, allowed a credit against Mrs. [REDACTED] salary for tax deducted in the sum of €4,554.15. However, tax deducted from the emoluments paid by the company was not remitted to the Revenue Commissioners in full. In respect of 2017, the company had a PAYE/PRSI/USC liability of €43,924.23 in relation to its employees however, the amount remitted totalled €38,807.47, leaving a shortfall of €5,116.76. The company went into liquidation on [REDACTED] 2018.



4. On 1 November 2018, an amended notice of assessment issued to the Appellants in accordance with section 997A TCA 1997, showing a balance of tax payable in the sum of €3,433.07. The Appellants duly appealed.

### **Legislation**

5. The relevant legislative provision is section 997A TCA 1997 which is set out at below.

Section 997A TCA 1997 – Credit in respect of tax deducted from emoluments of certain directors

*[(1) (a) In this section—*

*“control” has the same meaning as in section 432;*

*“ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company.*

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

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

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

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

*(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies [shall be given against the amount of tax chargeable in any assessment] raised on the person or in any statement of liability*



*sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.*

*(4) Where the company remits tax to the Collector-General which has been deducted from emoluments [paid by the company in a year of assessment, the tax remitted for that year of assessment] shall be treated as having been deducted from emoluments paid to persons other than persons to whom this section applies in priority to tax deducted from persons to whom this section applies.*

*(5) Where, in accordance with subsection (4), tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies, the tax to be so treated shall, if there is more than one such person, be treated as having been deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.]*

*(6) Where, in accordance with subsection (5), the tax to be treated as having been deducted from the emoluments paid to each person to whom this section applies exceeds the actual amount of tax deducted from the emoluments of each person, then the amount of credit to be given for tax deducted from those emoluments shall not exceed the actual amount of tax so deducted.*

*[(7) Notwithstanding section 960G and for the purposes of the application of this section, where a company has an obligation to remit any amount by virtue of the provisions of—*

*(a) the Social Welfare Consolidation Act 2005 and regulations made under that Act, as respects employment contributions,*

*(b) Part 18D and regulations made under that Part, as respects universal social charge, and*

*(c) this Chapter and regulations made under this Chapter, as respects income tax,*

*any amount remitted by the company for a year of assessment shall be set—*

*(i) firstly against employment contributions,*



*(ii) secondly against universal social charge, and*

*(iii) lastly against income tax.*

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

### **Submissions**

6. Mrs. [REDACTED] [REDACTED] was a proprietary director of [REDACTED] [REDACTED] Ltd (in liquidation) which owed PAYE/PRSI/USC for the year 2017. Mrs. [REDACTED] income for 2017 totalled €24,855. While the Appellants did not dispute the meaning and interpretation of the express statutory wording contained in section 997A, it was submitted in their notice of appeal that in view of the Appellants, it was not the intention of the legislation to capture tax from this level of income. Secondly, the Appellants submitted that as the liquidator had not completed his work the tax liability was prematurely raised.
7. In their statement of case, the Appellants submitted that taxes due by the Company for 2017, may have been discharged through the Revenue Sheriff. The Appellants submitted that if the Revenue Sheriff allocated payments from the company against VAT ahead of PAYE/PRSI/USC, then this could have created a personal liability for the Appellants which might otherwise have been avoided. The Appellants contended that it was premature to pursue taxes pursuant to section 997A TCA 1997, until the balance of tax owed by the company was established post offset of monies paid by the liquidator and/or post offset of the value of any assets seized by the Revenue Sheriff.
8. The Appellants requested clarification in relation to payments made by the company in respect of 2017. On 4 September 2019, the Respondent furnished a summary statement of account for employer's PAYE/PRSI/USC in respect of 2017, which showed a balance payable of €5,116.76.



9. In addition, by letter dated 16 December, 2019, the Respondent wrote to the Appellants setting out particulars in relation to warrant C15510517 from the Revenue Sheriff, issued on 1 August 2017. As set out in the correspondence, monies recovered by the sheriff in 2017, were offset against the company's PAYE/PRSI and USC outstanding liabilities in respect of 2017. Monies recovered on foot of the warrant were not offset against VAT in respect of 2017.
10. The Respondent submitted that it was not in dispute that Mrs. [REDACTED] was a person with a material interest in the company in accordance with section 997A TCA 1997, and that the company had failed to remit certain taxes in relation to emoluments for the tax year of assessment 2017. The Respondent submitted that a liability in accordance with s.997A TCA 1997, arose and that the Respondent was obliged to raise an assessment to tax in such circumstances. Thus, the Respondent submitted that the Appellants were liable in the sum of €3,433.07 raised per the amended notice of assessment dated 1 November, 2018, pursuant to the provisions of s.997A TCA 1997.

### **Analysis and findings**

11. 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—*

- (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.'*



12. 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.'*
13. The Appellants contended that it was premature to pursue taxes pursuant to section 997A TCA 1997, until the balance of tax owed by the company was established post offset of monies paid by the liquidator and/or post offset of the value of any assets seized by the Revenue Sheriff.
14. By letter dated 16 December, 2019, the Respondent wrote to the Appellants setting out particulars in relation to warrant C15510517 from the Revenue Sheriff, issued on 1 August, 2017, and the recovery and offset of sums pursuant to the said warrant.
15. The Appellants had contended in written submissions that the Revenue Sheriff assigned the payments made by the company against the warrants, arbitrarily between VAT and PAYE/PRSI/USC. As set out in the correspondence dated 16 December 2019, monies recovered by the sheriff in 2017, were offset against the company's PAYE/PRSI/USC outstanding liabilities in respect of 2017. Monies recovered on foot of the warrant were not offset against VAT in respect of 2017, as alleged by the Appellants. The Appellants requested clarification in relation to payments made by the company in respect of 2017, and I am satisfied that clarity was provided in correspondence dated 16 December 2019.
16. Mr. ██████ accepted that his spouse was a person with a material interest in the company in accordance with the provisions of section 997A TCA 1997. In addition, tax deducted from the emoluments paid by the company was not remitted to the Revenue Commissioners in full in respect of 2017, leaving a shortfall of €5,116.76. Where tax due by the company has not been remitted, the tax remains payable in accordance with section 997A.



## Conclusion

17. In appeals before the Tax Appeals Commission, the onus of proof rests on the Appellant(s) who must prove on the balance of probabilities that the assessment to tax raised by the Respondent is incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: *'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.'*
18. In terms of statutory interpretation, the approach to be applied is a literal one based on the relevant jurisprudence including *inter alia*, *Bookfinders Limited v Revenue Commissioners* [2020] IESC 60, *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Inspector of Taxes v Kiernan* [1982] ILRM 13 and *Revenue Commissioners v Doorley* [1933] IR 750.
19. The wording of s.997A is clear in that it provides that *'..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..'* In this appeal, tax deducted by the company in respect of the emoluments was not remitted in full to the Respondent. The Appellants in this appeal did not succeed in proving on the balance of probabilities that that the tax assessed by the Respondent pursuant to section 997A TCA 1997, was not payable. As a result, and for the reasons set out above, I determine that the assessment to tax dated 1 November, 2018, in the sum of €3,433 shall stand.
20. This appeal is hereby determined in accordance with section 949AK TCA 1997.



COMMISSIONER LORNA GALLAGHER

11<sup>th</sup> day of November 2021

**This determination has not been appealed.**



