



10TACD2022

■■■■ and ■■■■

BETWEEN/

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

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 €8,231.37.
2. The Appellants are jointly assessed and Mr. ■■■■ is the assessable and chargeable spouse. Mrs. ■■■■ was a director and 30% shareholder of ■■■■ Limited (the 'company') from ■■■■ 2015, until her resignation on ■■■■ 2018. Accordingly, for the tax year of assessment 2017, Mrs. ■■■■ was a person with a material interest in the company pursuant to the provisions of section 997A TCA 1997.
3. In 2017, Mrs. ■■■■ received a salary of €45,833.37 from the company showing a deduction of tax in the sum of €6,590.80 and a deduction of universal social charge ('USC') in the sum of €1,641.26. Mr. ■■■■ in his tax return in respect of the tax year of assessment 2017, claimed a credit for the full amount of tax and USC deducted by the company in respect of emoluments paid to Mrs. ■■■■ However, tax deducted from the emoluments paid by the company was not remitted to the Revenue Commissioners. In respect of 2017, the company had a PAYE/PRSI/USC liabilities of €33,929.12 in relation to the emoluments of its employees however, the amount remitted totalled €8,371.07, leaving a shortfall of €25,558.05. The sum of €8,371.07



remitted by the company was treated as having been deducted firstly from emoluments of the sole employee who did not have a material interest in the company in accordance with s.997A(4) TCA 1997. The company went into liquidation on 14 September, 2018.

4. On 23 November 2018, an amended notice of assessment issued to Mr. [REDACTED] as the assessable spouse, in accordance with section 997A TCA 1997, withdrawing the tax and USC credited to Mrs. [REDACTED] and showing a balance of tax payable in the sum of €8,213.37. 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] was a 30% shareholder in the company in 2017, and therefore was a person with a material interest in the company in accordance with section 997A TCA 1997.
7. Mrs. [REDACTED] submitted that while she was a shareholder in the company, she had no involvement or control in the finances of the company and that she was made a shareholder by the managing director 'to inflate her position within the company' and it was submitted by the Appellants that becoming a shareholder never provided any benefit either financially or professionally to Mrs. [REDACTED]
8. Mrs. [REDACTED] payslips issued to her showing deductions for PAYE, PRSI and USC and Mrs. [REDACTED] submitted that it was her genuine belief that the sums deducted had been remitted to the Respondent. She stated that the managing director had informed her that the sums had been so remitted.
9. Mrs. [REDACTED] submitted that it was incorrect to assess her to tax on her gross salary after relevant taxes had been deducted, when these taxes had not in fact been remitted by the company and that as a result, the gross amount could not be said to



have been received by Mrs. [REDACTED] Mrs. [REDACTED] submitted that she should be taxed on the net amount.

10. The Appellants submitted that any payment made to the Respondent by the company should be assigned to the discharge of the Appellants' taxes and that none should apply to the managing director. The Appellants submitted that the company paid at least €20,000 to the Collector General in 2018 and the Appellants submitted that this payment had not been taken into account by the Respondent. In response the Respondent stated that the amounts paid in relation to 2017 were €4,474.31 received on 25 July, 2017, and €3,896.76 received on 10 August, 2018, which totalled €8,371 in respect of PAYE taxes for 2017. The Respondent provided written verification from the office of the Collector General confirming the payments made, a statement of account in relation to the company in respect of 2017, and a computation in relation to the allocation and calculation of taxes in accordance with section 997A TCA 1997.
11. 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. In support, the Respondent furnished a statement of PAYE/PRSI/USC owed by the company for 2017, the company P35 details for 2017, the Appellants' form 11 for 2017, the CRO company return for 2017 and the CRO change of director return submitted by the company. The Respondent submitted that section 997A TCA 1997, was a statutory mechanism to secure the payment of taxes and to ensure that only tax remitted to the Respondent could be claimed as a credit. The Respondent submitted that a liability in accordance with s.997A TCA 1997 arose and that the statutory duties and obligations of the Respondent obliged the Respondent to raise an assessment to tax in the circumstances. The Respondent submitted that the Appellants were liable to tax in the sum of €8,231.37 raised per the amended notice of assessment dated 23 November, 2018, pursuant to the provisions of s.997A TCA 1997.
12. The Respondent acknowledged the difficulties faced by Mrs. [REDACTED] in the company, and the steps she took to address those difficulties including the resignation of her directorship on [REDACTED] 2018. However, the Respondent's position was that the Respondent was bound by its statutory duties and obligations to act in accordance



with the legislation in raising the assessment pursuant to the provisions of section 997A TCA 1997.

Analysis and findings

13. 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.'*

14. 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.'*

15. Mrs. [REDACTED] submitted that it was incorrect to assess her to tax on her gross salary after relevant taxes had been deducted, as the tax was not in fact remitted to the Respondent by the company. Mrs. [REDACTED] encountered difficult circumstances in the course of her employment and she did her best to address these difficulties and



did so in good faith. I accept that Mrs. [REDACTED] genuinely believed that the sums deducted in her payslips had been remitted by the company to the Respondent.

16. The Respondent submitted that the reference to '*emoluments paid*' in subsection 997A(3) is a reference to the gross value of the emoluments and that while emoluments are paid net, an employee in receipt of emoluments obtains the benefit of the gross amount in accordance with the law, where tax deducted has been remitted to the Respondent.
17. As the company in this appeal did not remit to the Respondent the tax deducted, a credit could not be claimed by Mrs. [REDACTED] in respect of tax not remitted. In short, while section 997A TCA 1997, does not alter the amount of tax due in respect of emoluments, it provides that where tax due has not been remitted, it remains payable.
18. Section 997A TCA 1997, operates to prevent a person with a material interest in a company from obtaining the benefit of a tax credit in respect of his/her emoluments where tax deducted has not been remitted to the Respondent. It is not in dispute that Mrs. [REDACTED] was a person with a material interest in the company in accordance with the provisions of section 997A TCA 1997, and that tax deducted from emoluments paid by the company was not remitted to the Revenue Commissioners in full in respect of 2017. Where tax due by the company has not been remitted, the tax remains payable in accordance with the provisions of section 997A TCA 1997.

Conclusion

19. 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.*'
20. 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.



21. 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 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 23 November, 2018, in the sum of €8,231.37 shall stand.

22. This appeal is hereby determined in accordance with section 949AK TCA 1997.



COMMISSIONER LORNA GALLAGHER

12th day of November 2021

This determination has not been appealed.

