



Between

**113TACD2022**

████████████████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal by ████████████████████ (“the Appellant”) pursuant to the provisions of section 949I of the Taxes Consolidation Act 1997, as amended (“the TCA 1997”), against the refusal of the Revenue Commissioners (“the Respondent”) to grant an application for a research and development (“R&D”) tax credit for 2019 on the ground that the application was not submitted within the twelve month time limit. The value of the R&D credit at issue is €79,964.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

**Background**

3. The Appellant’s CT1 form for 2019 was filed on 28 August 2020. It did not include a claim for an R&D credit for 2019. On 28 January 2021, the Appellant’s agent contacted the Respondent to state that it wished to submit an R&D credit for 2019. On 25 February 2021, an amended notice of assessment issued to the Appellant’s agent, which included an R&D tax credit claim for 2019 with a first instalment under section 766(4B)(b)(i) of the TCA 1997.

4. On 15 April 2021, the Respondent advised the Appellant's agent that the claim for the R&D credit for 2019 was being disallowed as it was not made within the time limit prescribed by section 766(5) of the TCA 1997. A further amended notice of assessment issued on 13 September 2021 which excluded the 2019 R&D credit and the claim for the first instalment due under section 766(4B)(b)(i) of the TCA 1997.
5. On 3 August 2021, the Appellant, via its agent, appealed the refusal of the 2019 R&D credit to the Tax Appeals Commission ("the Commission"). In the Notice of Appeal, and in a subsequent Statement of Case submitted on 23 November 2021, the Appellant contended that it had not been possible to submit the application for the R&D credit on the Revenue On Line ("ROS") service within the time limit.
6. On 1 February 2022, the Appellant submitted an updated Statement of Case which significantly amended its position. It contended that its (now former) agent had failed to submit the R&D credit on time, and had not notified the Appellant of his failure to do so before the twelve month deadline had elapsed.
7. On 27 June 2022, the Commissioner held a Case Management Conference ("CMC") with the parties. At the CMC, the Commissioner explained the nature of the Commission's jurisdiction, that it was limited to considering whether the Respondent's refusal of the 2019 R&D credit was correct in law, and that it did not include an equitable jurisdiction. The Appellant indicated that it would wish to call evidence from its former agent regarding his alleged failure to submit the application on time. The Commissioner stated that, given this position, it would not be possible to determine the appeal on the basis of the written submissions alone and that an oral hearing would be required. The Appellant stated that it wished to have an oral hearing.
8. Following the conclusion of the CMC, the Appellant emailed the Commission to state that it had changed its position and was happy for the appeal to be determined without an oral hearing. The Respondent confirmed that it had no objection to this course of action. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

#### **Legislation and Guidelines**

9. Section 766(5) of the TCA 1997 states that

*"Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred."*

Section 959L of the TCA 1997 states *inter alia* that

“

*(1) A return required by this Chapter may be prepared and delivered by the chargeable person or by another person acting under the chargeable person’s authority in that regard.*

*(2) Where a return is prepared and delivered by that other person, the Acts shall apply as if it had been prepared and delivered by the chargeable person...*”

## **Submissions**

### *Appellant*

10. The Appellant’s case changed substantially between the Notice of Appeal of 3 August 2021 and its second Statement of Case of 1 February 2022. Whereas it had originally claimed that its agent had been precluded from submitting the R&D credit on ROS within the required time frame, it subsequently accepted that the claim had not been made in time but argued that this was the fault of its agent and it should not be penalised for his failure to comply with the statutory requirements.
11. The Appellant submitted that it provided the R&D calculations to its agent on 18 December 2020. It stated that its agent did not notify it that he had failed to submit the credit application by the deadline of 31 December 2020. It stated that, had it been so notified, it would have directly contacted the Respondent to resolve the issue.
12. The Appellant did not dispute the twelve month timeframe prescribed by section 766(5) of the TCA 1997. However, it contended that its agent had been “misleading and inappropriate” and argued that the failure to claim the R&D credit in time was wholly the responsibility of its agent. It argued that it had been “*honest and transparent about the actions on our side of this CT1 amendment and that it should still be allowed to proceed (with the processing and amendment of the CT1 form) for 2019 particularly in light of what the R&D costs of the company are and what the repercussions of not having it processed would have on the company.*”

### *Respondent*

13. The Respondent argued that the use of “shall” in section 766(5) of the TCA 1997 indicates an absence of discretion in the application of the provision, and that accordingly the Applicant was out of time for applying for the 2019 R&D credit. Regarding the Appellant’s argument that its agent was at fault, it referred to section 959L of the TCA 1997, and stated

that an agent submitting a return under the authority of a chargeable person is regarded as being submitted by the chargeable person. It disputed the previous submissions of the Appellant that its agent had not been able to access ROS within the requisite timeframe, or that he had contacted the Respondent to notify him of these alleged difficulties before 31 December 2020.

### **Material Facts**

14. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

14.1. The Appellant's agent submitted the application for the Appellant's R&D tax credit for 2019 after 31 December 2020.

### **Analysis**

15. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: "*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.*"

16. Section 766 of the TCA 1997 makes provision for tax credits to companies that have incurred expenditure on R&D. Subsection (5) provides that an application for any such tax credit "*shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred.*" (emphasis added).

17. It was not in dispute in this appeal that the Appellant had not submitted its application for an R&D tax credit for 2019 within the twelve month timeframe set down by section 766(5), i.e. by 31 December 2020. The use of "shall" in section 766(5) indicates that the timeframe for application is mandatory, and that no exceptions to this timeframe are permitted. Therefore, an application must be made within the twelve month timeframe to be valid.

18. The Appellant did not dispute that its application was out of time but argued that this had been the fault of its agent and that it should not suffer as a result. While there was no direct evidence before the Commissioner from the Appellant's former agent, the Commissioner was provided with copies of emails that the Appellant claimed were between it and its former agent and which supported its position that its agent had been responsible for the failure to submit the application in time.

19. The Commissioner has sympathy for the position the Appellant finds itself in, and accepts that the Respondent's refusal to allow the application for the 2019 R&D credit has caused it significant financial difficulties. The Commissioner finds that the Appellant's agent failed to submit the 2019 application in time, and has no reason to dispute the Appellant's submission that this failure was the responsibility of the agent, rather than the Appellant itself.
20. However, the Commissioner notes the provisions of section 959L of the TCA 1997. There is no dispute that the agent was acting on behalf of the Appellant, and therefore section 959L applies so that the failure of the agent to submit the 2019 application within the time frame is treated as if it was a failure of the Appellant itself.
21. As stated above, the twelve-month timeframe in section 766(5) is mandatory and does not allow for any exceptions. Furthermore, the Commissioner's jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J. at para. 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the Respondent's refusal of the application was correct in law, and has no equitable jurisdiction or broader power to consider the wider circumstances surrounding the failure to submit the application in time, including the relationship between the Appellant and its agent.
22. In the circumstances, therefore, the Commissioner is satisfied that the Respondent was correct in law in disallowing the Appellant's application for an R&D tax credit for 2019, as it was made outside of the time limit prescribed by section 766(5) of the TCA 1997.

### **Determination**

23. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant's application for an R&D tax credit for the tax year 2019 in the amount of €79,964.
24. The appeal is hereby determined in accordance with sections 949U and 949AJ of the Taxes Consolidation Act 1997 as amended ("the TCA 1997"). This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



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Simon Noone  
Appeal Commissioner  
06<sup>th</sup> July 2022.