139TACD2022

BETWEEN/

[redacted]

Appellant

V

REVENUE COMMISSIONERS

Respondents

DETERMINATION

Introduction

1. The Appellant is a practicing [redacted] and sole trader, trading under the style and title of [redacted] This is an appeal against an amended notice of assessment to income tax in the sum of €112,455.68 in respect of the tax year of assessment, 2014. The amended notice of assessment, raised on 21 December, 2016, disallowed a deduction of €220,000 claimed by the Appellant in respect of services provided by a company, [redacted] Ireland Limited (hereafter '*the company*' or [redacted] of which the Appellant was a director and 99% shareholder.

2. The question for determination in this appeal is whether the Appellant has established that charges raised by the company to the Appellant in the sum of €220,000, claimed as expenses of the Appellant's trade as a [redacted] qualify for deduction on the basis that those expenses were wholly and exclusively laid out or expended for the purposes of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

Background

3. The Appellant is a practicing [redacted] and sole trader, trading under the style and title [redacted] An audit of the Appellant's tax affairs followed a letter of audit notification dated 19 May 2016.

4. The letter requested clarification in relation to consultancy payments recorded in the accounts in the sum of €240,000 and clarification regarding to whom the payments were made and a request for detail in relation to the services to which they related. The letter requested a detailed outline of the services for each component of the €240,000.

5. A meeting took place in mid-June 2016 between the Respondent's officials, the Appellant and her accountant. A franchise agreement between the Appellant and [redacted] was not discussed at that meeting. Following the meeting the Respondents sent a letter on 20 June, 2016, requesting further information in relation to the services provided to [redacted] by [redacted] The franchise agreement was provided to the Respondent for the first time under cover of letter of the Appellant's agent dated 9 August, 2016.

6. The Appellant's position is that in 2008, [redacted] engaged a trading company, [redacted] (a company in which the Appellant is a director and a 99% shareholder) to provide various business related support services to the Appellant's [redacted] practice. [redacted] did not provide these services to [redacted] until, the Appellant submitted, 2012.

7. The Appellant submitted that non-legal and administrative tasks heretofore performed by the Appellant in person as part of her [redacted] practice were from 2012 onwards, provided and performed by her in precisely the same manner and in person, but in a new capacity, as agent of the [redacted] and that the sums incurred by [redacted] in respect thereof constituted a tax deductible expense for the purposes of her [redacted] practice.

Submissions in brief

8. The Appellant submitted that the sum of €220,000 charged by [redacted] in respect of non-[redacted]/admin services provided to the Appellant's [redacted] practice trading under the

style and title of [redacted] for which the Appellant claimed a deduction, were wholly and exclusively laid out or expended for the purposes of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

9. The Respondent submitted that the sum of €220,000 for which the Appellant claimed a deduction in her [redacted] sole tradership for the tax year of assessment, 2014, was not deductible on the basis that the amount was not wholly and exclusively laid out or expended for the purposes of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

Legislation

Section 81 TCA 1997 – General rule as to deductions

(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts
(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of –
(a) Any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession.

…….

Evidence

10. Witness evidence was provided on behalf of the Appellant, by Mr. [redacted] by the Appellant and by Mr. [redacted] tax advisor.

[redacted], Appellant

11. The Appellant stated that she commenced practice in 19[redacted]. From 20[redacted]-20[redacted] she specialised in [redacted] and employed ten staff which included five [redacted] After the economic downturn and during the years 20[redacted] to 20[redacted], the Appellant employed one [redacted] executive on a part-time basis. The Appellant stated*: 'I have no staff whatsoever since 2012, except that part-time [redacted] executive who is acting in*

[redacted] *matters, and I do everything myself, both on behalf of* [redacted] *and on behalf of* [redacted] *services*.' The Appellant confirmed in direct examination that she had no staff in 2013 and 2014 and for the most part, 2012. The Appellant stated that in her practice, [redacted] she spent 15%-20% of her time providing [redacted] advice and the other 80-85% of her time supporting the [redacted] advice through non-[redacted] and administrative services. The Appellant stated that her decision to forgo staff was made to allow her to pay for [redacted] reports necessitated by the work she was involved in.

12. The Appellant established a [redacted] business franchise specialising in [redacted] during the Celtic Tiger years which was in operation and expanding up to 20[redacted] prior to the economic downturn. In 20[redacted] the Appellant decided she would try and franchise the [redacted] market however, little progress was made. The Appellant stated that the franchise agreement was entered into in 2008. From 2008, the Appellant decided to continue in practice as a [redacted]

13. In relation to the work provided by [redacted] to [redacted] when asked, the Appellant stated that there was a substantial amount of photocopying, booklet preparation and that compliance and regulation was also substantial. She stated that her [redacted] work was approximately 20% of her practice while the remainder was non-[redacted] work and administration. She stated that one must update the website to maintain profile, make appointments with clients, reschedule appointments and do the accounts. She stated she also did the filing. When pressed, she stated that that was her answer to the question of what support services were provided by the company and that she had nothing further to add.

14. While the sum of €220,000 was billed in 2014, the Appellant stated that it related to work done in previous tax years. The Second Schedule of the Franchise agreement provided for the discharge of fees of €220,000 commencing on 30 June, 2014, in respect of retrospective service fee payments *'from the commencement of the ... Agreement'*. The payments were stated in round sum amounts as follows:

- 30 June, 2008 - €40,000
- 30 June, 2010 - €60,000
- 30 June, 2012 - €60,000
- 30 June, 2014 - €60,000

15. [redacted] raised invoices to [redacted] in relation to the services dated 31/07/2014 and 30/9/2014 in the sums of €85,336 and €134,634 exclusive of VAT (totalling €219,970).

16. The Appellant stated that the reason the invoices were not raised in previous years was because the monies were not due until June 2014 and the Appellant stated that she allowed herself sufficient time to build a [redacted] practice. She also stated that she, as [redacted] was not in a position to pay fees to [redacted] until 2014 and that payment was not due until 2014.

17. The Appellant stated that she started providing services to [redacted] as agent of [redacted] *'in the middle of 2011, towards the end of 2011 or thereabouts'*. She stated that the invoices related to 2012, 2013, 2014 and some of 2011 *'as far as I know'* but that she was not certain.

18. The Appellant confirmed that when [redacted] raised invoices in 2014, the company did not have a bank account. She stated that she opened a bank account for the company in 2015 but was unable to specify when precisely that occurred. She stated that the funds were gradually transferred to the company over several years however, there were no bank statements adduced in support of showing the transactions.

19. The Appellant accepted under cross-examination that when she deducted the expense of €220,000 to the company, this money was no longer subject to income tax in her [redacted] practice but was subject to corporation tax at a much lower rate.

20. The Appellant stated during cross examination that she was an employee of [redacted] however, she did not furnish a contract of employment nor could she explain why there were no figures in the [redacted] returns relating to wages. She stated that she did all the work in her [redacted] practice.

21. The Appellant confirmed that she was a 99% shareholder in [redacted] and that the franchise agreement dated [redacted], 2008, on its signature page was signed as between the Appellant on behalf of [redacted] and the Appellant on her own behalf. The Appellant confirmed that she drew up the agreement and that she received some advice from her then advisor.

22. The Appellant stated that she owned the trade name '[redacted] and held it on trust for [redacted] so that while the franchise agreement purported that the company authorised the Appellant to use the trade name, it was first necessary for the Appellant to allow the company to use the trade name.

23. The Respondent put it to the Appellant that while the franchisee (the Appellant) was required to use only advertising and promotional material provided by [redacted] as per the franchise agreement, in reality, the Appellant arranged advertising for herself in her own legal practice. The Appellant's response was that the Respondent was '*conflating two entities*' because the Appellant's position was that in providing the advertising to her [redacted] practice she did so in her capacity as agent of the company.

24. The franchise agreement provided that the franchisor would provide '*basic and advanced instruction and training'*. When asked by Counsel for the Respondent whether she provided herself with the requisite training she answered that the training did not happen.

25. When asked whether, as a director of the company, she sent an account of the services provided, to [redacted] she stated that she did not.

26. The Appellant stated that [redacted] was paid €220,000 in 2014, however she was unable to say how the payment was received in light of the fact that the company did not have a bank account in 2014.

27. A corporation tax return for 2014 filed on behalf of [redacted] stated that there were zero sales for 2014. The Appellant, as director and 99% shareholder, stated in evidence that this was correct.

28. A subsequent corporation tax return filed in respect of the same period provided that the sales totalled €220,000. When asked to explain this discrepancy the Appellant stated: *'I can't explain a thing, I am not an accountant, I don't know.'*

29. A third version of the return filed in respect of the same period provided that the sales totalled €60,000. The Appellant was unable to explain the inconsistencies.

30. While the Appellant in her outline of arguments submitted that '*The motive of* [redacted] *in engaging* [redacted] *to provide certain services was solely business related and this is a matter of fact*' the Appellant during cross-examination stated::

'I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide for a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this. .. '
.....every citizen of this country is entitled to establish companies and service companies, including [redacted] *and accountants and consultants, if they wish. Indeed we have firms in Dublin, and I'll keep it very general, who do it consistently. I see nothing wrong with that., I have put nothing in there that would constitute personal expenditure, for example, childminding or cleaning, servicing for my home or things of that nature, I've done no such thing, and if I did rightly, I would be wrong.'*

31. When Counsel for the Respondent put it to the Appellant that: *'... don't you see the point here is that the fact that this was structured as an expense was for tax purposes, it didn't have to be an expense at all?*' the Appellant stated that she reiterated the position above and that "*what I established is legal .... I am a* [redacted] *for* [redacted] *years and you can't dismiss it.'*

32. Later in her evidence, when Counsel for the Respondent put it to the Appellant that she could have performed the services for herself as a [redacted] in her own practice, she stated: *'I am telling you that I have every legitimate legal right to establish a service company, and that is exactly what I did*.'

33. Further on in evidence the following exchange took place between Counsel for the Respondent, and the Appellant;

> *'Q:... but what you haven't been able to explain, Ms.* [redacted] *I would suggest, is what you had to incorporate a company to do this?*
>
> *A: You don't have to incorporate a company, but the law allows us to do so, and that is what I did. I remember – no, I won't say that – I set up a tax planning exercise to avail of the best possible advantages that the law can give me to*

implement this, and I followed it, as far as I am concerned, in a conscientious manner.

Q: And so when you entered into the agreement your motivation, at least in a significant part, was to do things in a more advantageous way from the perspective of tax?

A: One hundred per cent, yes, and tax planning.

Q: You didn't have to do it that way?

A: I didn't have to, but I did, and there is nothing stopping me from doing it.'

Mr. [redacted] tax advisor

34. Mr. [redacted] tax advisor with [redacted] confirmed that he was the Appellant's tax advisor and that he filed returns on her behalf and on behalf of the company, for the relevant tax year of assessment.

Mr. [redacted] and sole trader.

35. Mr. [redacted] gave evidence providing an overview of the work involved in [redacted] claims. He spoke of his experience of [redacted] practice, the staff he employed and some of the work that was done which included photocopying, gather of files, checking of files and organising of diaries.

36. Mr. [redacted] stated that he was not an expert witness but that he was providing evidence as an independent witness. However, he confirmed that he knew the Appellant for approximately 40 years, had a business relationship with her and received payment from her of €25,000 in 2014. The witness was unable to recall what the payment was for. He stated that he thought it was for a [redacted] though he was unsure. He stated that the Appellant had informed him that she had a tax appeal and that he would be asked about the [redacted] system.

Material findings of fact

37. Based on the evidence, I find as a material fact that the Appellant identified no benefit or gain to the [redacted] trade ([redacted] for the expenditure incurred for services provided by [redacted]. Post-acquisition of the services, [redacted] operated in precisely the same manner as before. The non-[redacted]/admin work continued to be performed by the Appellant and there was no advantage, added resource, efficiency or gain acquired by the [redacted] for the substantial expense incurred to [redacted]

38. In accordance with the Appellant's evidence, I find as a material fact that payment of the sum €220,000 to the company was motivated by the Appellant's desire to provide for and ameliorate her pension.

ANALYSIS

No benefit to the trade for the expenditure incurred

39. The most notable aspect of this appeal is the fact that after the trade had incurred the substantial expense of €220,000 (which represented 66% of turnover for that year which totalled €331,667) the trade operated and was run in precisely the same manner as before. The trade incurred the expense, with no identifiable benefit, resource or advantage having been acquired by the trade in respect of the expense.

40. Prior to the acquisition of the services, the Appellant performed the non-[redacted]/admin work as part and parcel of her practice and the Appellant performed the non-[redacted]/admin work in precisely the same manner after the services had been acquired. Because she performed the admin work herself, the acquisition of the services did not free her of her own resource, did not increase efficiencies and did not allow her to devote more time to her [redacted] work. Her resource was applied in precisely the same manner both before and after the expense was incurred. The test in section 81(2) necessitates that the expense be '*wholly and exclusively laid out or expended* ***for the purposes of the trade or profession'****.*

41. The Appellant stated that she started providing services to [redacted] as agent of [redacted] *'in the middle of 2011, towards the end of 2011 or thereabouts'*. She stated that the invoices related to 2012, 2013, 2014 and some of 2011 *'as far as I know'* but that she was not certain.

42. There is the complicating matter then of the fact that on the Appellant's evidence, the Appellant started providing non-[redacted]/admin services to [redacted] as agent/employee of [redacted] *'in the middle of 2011, ... or thereabouts'* . There was no evidence that there was a cut-off date where, from that date onwards, all of the non-[redacted] work was performed by the Appellant as agent of the company. What this means is that on the Appellant's evidence, for a period of time unspecified, the Appellant performed the non-[redacted]/admin services some of the time as agent/employee of the company and some of the time as [redacted] in her own practice. The Appellant did not seek to identify a delineation between these roles in terms of hours, fees or tasks, if indeed such delineation would have been possible bearing in mind that the Appellant herself performed all of this work.

43. The trade in this case incurred an expense of €220,000 for the acquisition of services however, the trade in reality acquired nothing additional for this expenditure. The trade operated precisely as before and the non-[redacted]/admin work was carried out by the Appellant in precisely the same manner as before. While the non-[redacted]/admin services were provided by the company, the Appellant was the person tasked with performing the services and thus there was no increase in efficiencies in the trade for the acquisition of the services, no economies of scale, no freeing up of the Appellant's resources and no identifiable benefit or advantage to the trade, notwithstanding the substantial expenditure incurred for the services.

44. It is clear that the expenditure was not expended *for the purposes of the trade* as no trading purpose has been identified on the evidence. In these circumstances, the expense is wholly disallowable not being money wholly and exclusively laid out or expended for the purpose of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

Duality of purpose

45. Expenditure which is incurred for non-business purposes will not be exclusively incurred and will not be deductible under section 81 TCA 1997.

46. Under cross examination the Appellant stated: *'I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide for a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this. .. '*
.....every citizen of this country is entitled to establish companies and service companies, including [redacted] *and accountants and consultants, if they wish. Indeed we have firms in Dublin, and I'll keep it very general, who do it consistently. I see nothing wrong with that., I have put nothing in there that would constitute personal expenditure, for example, childminding or cleaning, servicing for my home or things of that nature, I've done no such thing, and if I did rightly, I would be wrong.'*

47. When Counsel for the Respondent put it to the Appellant that: *'... don't you see the point here is that the fact that this was structured as an expense was for tax purposes, it didn't have to be an expense at all?'* the Appellant stated that she reiterated the position above and that "*what I established is legal .... I am a* [redacted] *for* [redacted] *years and you can't dismiss it.'*

48. Later in her evidence, when Counsel for the Respondent put it to the Appellant that she could have performed the services for herself as a [redacted] in her own practice, she stated: *'I am telling you that I have every legitimate legal right to establish a service company, and that is exactly what I did*.'

49. Further on in evidence the following exchange took place between Counsel for the Respondent, and the Appellant;

> *'Q:... but what you haven't been able to explain, Ms.* [redacted] *I would suggest, is what you had to incorporate a company to do this?*
>
> *A: You don't have to incorporate a company, but the law allows us to do so, and that is what I did. I remember – no, I won't say that – I set up a tax planning*

exercise to avail of the best possible advantages that the law can give me to implement this, and I followed it, as far as I am concerned, in a conscientious manner.

Q: And so when you entered into the agreement your motivation, at least in a significant part, was to do things in a more advantageous way from the perspective of tax?

A: One hundred per cent, yes, and tax planning.

Q: You didn't have to do it that way?

A: I didn't have to, but I did, and there is nothing stopping me from doing it.'

50. As is clear from the evidence, the Appellant's objective was to put a system of tax planning in place to provide a pension for her retirement and this is the reason she endeavoured to provide her services to her [redacted] trade through the corporate entity. She stated :' *I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide for a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this. .. '* .

51. It is clear from the evidence that the expenditure of €220,000 served not a dual purpose, but that the sole purpose of this expenditure and the '*system of tax planning'* put in place by the Appellant was to provide for her pension.

52. The Appellant mistakenly took the view that because she did not include items of personal expenditure (such as childminding or home cleaning) in the sum of €220,000, that she was entitled to avail of the deduction however, it is clear on the evidence that the Appellant did not comprehend the scope of the *'wholly and exclusively'* test contained in section 81 TCA 1997 and in particular, the Appellant failed to comprehend that her objective in expensing her own work through the company to avail of a tax deduction to provide for her pension, would be fatal to her claim for a deduction under section 81(2) TCA 1997.

53. While I have concluded above that the expense was not deductible in accordance with the provisions of section 81(2) TCA 1997 on the basis there was no identifiable benefit or advantage to the trade for the expenditure incurred, it is clear that independent of that conclusion, the expense is wholly disallowable '*not being money wholly and exclusively laid out or expended for the purposes of the trade or profession*' on the ground that the sole objective for the Appellant's services being supplied to her [redacted] trade through the company was to provide for and ameliorate the Appellant's pension.

Onus of proof

54. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant, in accordance with the established authorities including, *Menolly Homes Ltd v Appeal Commissioners and another,* [2010] IEHC 49. In *Menolly Homes*, Charleton J. at paragraph 22 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. The absence of mutuality in this form of appeal procedure is illustrated by the decision of Gilligan J. in T.J. v. Criminal Assets Bureau, [2008] IEHC 168. While the appeal in question there concerned income tax, the observations made in the course of the judgment as to the nature of a tax appeal are germane to deciding this issue. The applicant in that case was assessed for income tax by a tax inspector assigned to the Criminal Assets Bureau. He was assessed to tax on a large amount of income from apparently mysterious sources. Invoking his statutory right of appeal in those circumstances, the applicant sought disclosure of all information on which the assessment was made. Referring to the Revenue Customer Service Charter, the court noted that there was a self-imposed obligation on the Revenue Commissioners to give all relevant information whereby the taxpayer would understand his tax obligations. This did not extend, it was held by Gilligan J., to making an order for discovery. In taking the appeal, the taxpayer was undertaking the burden of appeal within the relevant formula as to the relief which he might be granted if successful. At para. 50 Gilligan J. stated:-*

> *"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. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. 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. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."*

55. In this case, the Appellant failed to establish that the fees paid for the services constituted a reasonably quantifiable or commercially objective expenses for [redacted] There was no expert or valuation evidence and no evidence that the Appellant's services as agent of [redacted] were commercially or objectively verifiable. There was no evidence that the Appellant could have commanded a sum in the region of €220,000 in the open market for these services had the Appellant had been in the market to supply the service to other firms. The fees charged lacked independent market

verification and there was no evidence that the fees were calculated on an objective basis or in accordance with market rates. The Appellant was free to charge (as agent of the company) any amount and agree (in her capacity as [redacted] to discharge such a sum. There was no objective valuation evidence verifying the quantum of these fees.

56. There was a significant absence of clarity around the precise tasks that were performed, the scale of fees chargeable and the rates that applied to particular tasks. Invoices were raised several years in retrospect '*for services rendered*' and without any fee narratives. In addition, there was no record of the days or hours worked.

57. In any trade or profession where substantial fees are charged by a company providing services to a trader, one would expect a process of review and sanction prior to the discharge of fees. In this case there was no evidence of a process of reviewing or sanctioning the charges, of raising questions nor of seeking value for money. It is clear that even if there were such a process, it would lack commercial reality as it would amount to the Appellant in her capacity as [redacted] challenging the value of her own work as agent of the company.

58. In her evidence the Appellant stated that she wished to provide for her pension and that she was entitled by law to mitigate her taxes in this particular manner so that she could maximise her pension. It is clear that for the Appellant, this was the reason for expensing services through the company instead of carrying out the non-[redacted]/admin work as part her trade as she had done in prior years. It may provide an explanation for the fact that the Appellant seemed largely unconcerned about the substantial level of fees incurred by her practice for this administration work which amounted to 66% of turnover for the tax year of assessment 2014 in which it was deducted.

59. This appeal proceeded to hearing before the Tax Appeals Commission in circumstances where on the day of the hearing, the Appellant persisted in asserting her entitlement to the deduction even though she was unable in her evidence, to adequately identify the services that were acquired by her [redacted] practice, the fee scale which applied to the services, the calculation of the fees, the dates of payment of the fees and the method of payment thereof. It is clear that such an approach cannot but fail because the onus of proof in tax cases rests on the Appellant and it is the Appellant who must demonstrate, through her own evidence, her books and records that she is entitled to the deductions claimed.

60. I should for completeness, note that the Appellant's agent raised an issue as to the validity of the assessment in his closing submission. However, the authorities are clear [*Menolly Homes Ltd v Appeal Commissioners and another,* [2010] IEHC 49, *Lee v Revenue Commissioners* [IECA] 2021 18 and *Stanley v The Revenue Commissioners* [2017] IECA 279] that public law challenges of this nature are reserved exclusively to the jurisdiction of High Court and do not fall within the remit of the Tax Appeals Commission.

Conclusion and Determination

61. The Respondent submitted that the filing, the photocopying, the placing of advertisements, the organising and all other tasks that were not [redacted] services could have been performed by the Appellant as part of her [redacted] practice, as these tasks heretofore had been performed. When asked in evidence why she did not continue performing the work herself, as principal [redacted] in her practice she stated; : *'I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide for a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this. .. '*

62. It is clear from the evidence that the Appellant did not fully comprehend the scope of the *'wholly and exclusively'* test contained in section 81 TCA 1997. In particular, the Appellant failed to understand that her objective in expensing her own work through the company to avail of a tax deduction to provide for her pension, would be fatal to her claim for a deduction under section 81(2) TCA 1997.

63. In addition, it is notable that after the trade incurred the substantial expense of €220,000 (66% of turnover for that year, which was €331,667) the trade operated in precisely the same manner as before it incurred the expense, with the Appellant performing all non-[redacted]/admin work in addition to the [redacted] work. No identifiable benefit, resource or advantage was acquired by the trade notwithstanding the substantial expense incurred. It is clear that the expenditure was not expended *for the purposes of the trade* as no trading purpose was identified on the evidence.

64. For the reasons set out above, I determine that the expense of €220,000 is disallowable, not being money wholly and exclusively laid out or expended for the purpose of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

65. The Appellant has failed to meet the requirements of the legal test contained in section 81(2) TCA 1997, and has failed to discharge the onus of proof in this appeal.

66. As the Appellant has not shown that the amended notice of assessment to tax in the sum of €112,455 is incorrect, the assessment shall stand.

COMMISSIONER LORNA GALLAGHER

22nd day of August 2022

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.