



Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a decision of the Revenue Commissioners (“the Respondent”) to subject the Appellant to a rate of 20% on payments it receives from its customers who are required to operate such payments under the Relevant Contract Tax (“RCT”) system.
2. For the purpose of comprehension RCT is a withholding tax that applies to certain payments made by principal contractors to subcontractors in the construction, forestry and meat-processing industries (“the specified industries”). The rates of RCT are 0%, 20% and 35% and the appropriate rate is determined by the Respondent following a risk assessment on the likelihood of the taxpayer defaulting in the payment of its taxation liabilities. This risk assessment is based upon a number of contingencies such as how long the taxpayer has been established and its previous taxation compliance history, if any.
3. A sub-contractor is a person who enters into a relevant contract with a principal contractor engaged in the specified industries. As the Appellant’s activities relate to construction, it

therefore follows that it is a subcontractor and as such where it engages in work as a subcontractor, the principal contractor is required to withhold RCT at the rate specified by the Respondent (20%) in respect of any payments made to the Appellant.

4. The RCT deducted is available as a credit against the subcontractor's taxation liabilities. Prior to 1<sup>st</sup> January 2012, if the subcontractor's taxation affairs and payment of the underlying liabilities were up to date, the Respondent generally approved interim refunds of RCT to the subcontractor. Post that date, while the deducted RCT is still available as a credit against the subcontractor's taxation liabilities, no repayment of RCT may be made to a subcontractor during the year in which the tax was deducted until such time as their tax return (Form CT1, in this instance) has been filed, a notice of assessment has issued and all liabilities for corporation tax and other taxes have been discharged. The effect of this change is that a subcontractor who is not on the 0% rate may build up a credit with the Respondent and suffer a lapse in time before getting that refund issued to it.

### **Background**

5. The Appellant commenced trading activities in the construction [REDACTED] industry in [REDACTED]. Its directors are an Irish resident individual and a [REDACTED] resident individual. The Appellant has offices in [REDACTED] and supplies [REDACTED] to the domestic and European market on a sub-contractor basis. The majority of the Appellant's personnel are also sub-contractors which means that they invoice the Appellant for services provided rather than receive a wage (as an employee) from the Appellant.
6. The Appellant was notified by the Respondent when it commenced trading that its appropriate rate for RCT was 20%. In July 2022, the Appellant wrote to the Respondent and requested that the rate of RCT imposed on it be reduced to 0%, as this would assist in financing its trading operations.
7. By way of letter dated 19<sup>h</sup> July 2022, the Respondent wrote to the Appellant and advised as it had only commenced trading activities and had not built up an adequate record of tax compliance, it was refusing the Appellant's request. As such, the Appellant was to remain on the 20% rate of RCT until such stage as it became more established and built up a sufficient tax compliance record with the Respondent.
8. The Appellant who was not in agreement with the Respondent's decision submitted an appeal to the Commission on 11<sup>th</sup> August 2022.
9. The Appeal was heard remotely on 10<sup>th</sup> February 2023. The Appellant and the Respondent ("the parties") were each represented by two members of staff. In addition,

the Commissioner had the benefit of written submissions from the parties which are considered below.

## **Legislation**

10. The following legislation is relevant to this appeal.

### Section 530E TCA 1997 – Rates of Tax

(1) *For the purpose of section 530D(2), the rate of tax—*

*(a) shall be zero where the Revenue Commissioners have made a determination that the subcontractor is a person to whom section 530G applies,*

*(b) shall be the standard rate (within the meaning of section 3) in force at the time of payment where the Revenue Commissioners have made a determination that the subcontractor is a person to whom section 530H applies,*

*(c) shall be 35 per cent where the Revenue Commissioners have made a determination that the subcontractor is a person to whom neither section 530G nor section 530H apply, and*

...

*(2) Any reference to a determination in subsection (1) is to the most recent determination made by the Revenue Commissioners under section 530I or as determined on appeal in accordance with that section, in respect of the subcontractor concerned.*

### Section 530G TCA 1997 – Zero rate subcontractor

*(1) Subject to subsections (2) and (3), this section applies to a person in relation to whom the Revenue Commissioners are satisfied that the person—*

*(a) is or is about to become a subcontractor engaged in the business of carrying out relevant operations,*

*(b) carries on or will carry on business from a fixed place established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,*

*(c) properly and accurately keeps and will keep any business records to which section 886(2) refers and any other records normally kept in connection with such a business,*

*(d) has throughout the previous 3 years complied with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts, in relation to—*

*(i) the payment or remittance of taxes, interest and penalties,*

*(ii) the delivery of returns, and*

*(iii) the supply, on request, of accounts or other information to a Revenue officer,*

*and*

*(e) in the case of a person who was resident outside the State at some time during the previous 3 years, has throughout that period complied with all the obligations comparable to those mentioned in paragraphs (c) and (d) imposed by the laws of the country in which that person was resident at any time during that period.*

*(2) This section does not apply to a person—*

*(a) ...*

*(b) which is a company, unless each director of the company and any person who is either the beneficial owner of, or able, directly or indirectly, to control more than 15 per cent of the ordinary share capital of the company, are persons to which paragraphs (c) and (d) of subsection (1) refer,*

*(c) who is or was a proprietary director or proprietary employee of a company engaged in the business of carrying out relevant contracts unless the company is a person to whom paragraphs (c) and (d) of subsection (1) refer,*

*(d) who, for good reason, the Revenue Commissioners consider unlikely to comply in the future with the obligations referred to in paragraph (c) or (d) of subsection (1),*

*...*

*(3) This section also applies to a person who satisfies the Revenue Commissioners that, in all the circumstances, the matter or matters referred to in subsection (1) or (2), which would otherwise cause such person not to be a person to whom this section applies, ought to be disregarded for the purposes of this section.*

## Submissions

### *Appellant*

11. The Appellant's representatives provided the Commission with cashflow projections ("cashflows") for the period July 2022 to December 2022. Cashflows are an accounting tool which show the movement of money in and out of a business over a period of time which is usually estimated as it forecasts into the future. The purpose of cashflows is to assist a business in identifying its cash surpluses and deficits into the future so that it can ensure its business is adequately financed.
12. The Appellant's cashflow projections (which were provided when it lodged its appeal in August 2022 and hence were estimated at that time) showed monthly details of the average amount which the Appellant anticipated it would be invoicing its principal contractors for services provided and the amount subsequently receivable from those principal contractors (which was after the deduction of 20% RCT). These payments from its principal contractors represented its entire cash receivable for the period July 2022 to December 2022.
13. In addition, the cashflows detailed the monthly payments made by the Appellant to its contractors and other expenses which it was liable to discharge on a monthly basis. These payments represented its total cash expenditure for the provided period.
14. The combined effect of the presented monthly cashflows, in taking the cash receivable and deducting the cash expenditure, showed that the Appellant had a negative cash balance of €51,500 as at December 2022 and accumulated RCT of €257,792 withheld by the Respondent.
15. The Appellant's representatives submitted this demonstrated that the build-up of the large RCT credit and the negative cashflow was putting the business under "*enormous strain*". As such, the Appellant submitted that it was unable to complete the project it had undertaken and was further prohibited from undertaking additional contracts, thus affecting its ability to develop.
16. In response to the Respondent's submission that the Appellant had not reverted with information it had requested to consider its request (see paragraph 18 below), the Appellant's representatives advised that the "*lady who looked after the "Revenue" had left the company*" and as such it was regrettable that this information was not provided. The Appellant's representatives submitted that the Appellant would endeavour to supply this information after the conclusion of its appeal.

17. In summation, the Appellant's representatives submitted that the imposition of a 20% RCT rate was detrimental to the Appellant's business survival and growth. It therefore requested the Commission to reduce its rate of RCT from 20% to 0%.

*Respondent*

18. The Respondent's representatives stated that it had sought information from the Appellant, in particular regarding its non-resident director, in order to exercise its discretion on the appropriate rate of RCT under section 530G (3) TCA 1997. The Respondent's representatives stated that this information was not received from the Appellant despite reminders issuing in that regard.

19. The Respondent's representatives submitted absent this information, it was unable to further consider the Appellant's request. As such, the Respondent submitted that the strict statutory provision as provided for under 530G (1) (d) TCA 1997 must prevail.

20. Thus, the Respondent submitted as the Appellant had not been trading for the requisite 3 year period as required under section 530G (1) (d) TCA 1997, then it was required to refuse the Appellant's request to reduce its rate of RCT from 20% to 0%.

21. In summation, the Respondent's representatives submitted as the Appellant had failed to provide it with requested documentation, then it was required to adapt the strict statutory provisions under section 530G (1) (d) TCA 1997. As those statutory provisions require the Appellant to have a three year trading period and as it had not, then the Respondent's representatives submitted that the Commission should refuse the Appellant's request to reduce the RCT rate.

**Material Facts**

22. The Commissioner finds the following material facts:

22.1. The Appellant commenced trading operations in [REDACTED].

22.2. The Appellant's business activities are the provision of staff who provide [REDACTED] to the construction industry.

22.3. As the Appellant is involved in the construction industry and provides services to a principal contractor, it is subject to RCT deductions on the payments it receives from its principal contractors.

22.4. The rate of RCT was set by the Respondent at 20%.

22.5. The Appellant does not have a three-year tax compliance history with the Respondent.

22.6. The Respondent requested various documentation and information from the Appellant. This information was not provided by the Appellant.

### **Analysis**

23. The provisions of section 530E TCA 1997 requires the Respondent to determine an appropriate rate of RCT for the Appellant as it is engaged as a sub-contractor in the construction industry.
24. Following a review of the Appellant's position, the Respondent determined that the appropriate rate of RCT was 20%. The Appellant requests the Commission determine that the rate notified by the Respondent be reduced to 0%. In order for this to occur, the provisions of section 530G TCA 1997 must be fulfilled.
25. Those provisions require the Appellant to satisfy a number of requirements in order to be eligible for the 0% rate of RCT. In particular, section 530G (1) (d) TCA 1997 requires the Appellant to have complied with all its taxation filing and payments requirements for the previous three years to be so eligible. As the Appellant's business activities only commenced shortly before it lodged its appeal and as it has not traded for the requisite three years, it follows that it is unable to fulfil this requirement.
26. However, the provisions of section 530H (3) TCA 1997 permits the Respondent to dispense with the three year compliance requirement in circumstances where it considers those provisions ought to be disregarded. In order for this to occur, the Respondent is required to satisfy itself, in all the circumstances, that it is unlikely that the Appellant will default in the filing of its tax returns or payment of the associated liability.
27. The Commissioner notes that the Respondent sought information and documentation from the Appellant in order to satisfy this requirement. As the Appellant failed to provide this documentation for the reasons provided, it therefore follows that the Appellant did not obtain sufficient information in order to satisfy itself that it could have regard to the provisions of section 530H (3) TCA 1997.
28. For that reason, the Commissioner determines that the Respondent was correct to refuse the Appellant's request for its RCT rate to be reduced from 20% to 0%. Therefore, the Appellant's appeal is refused and the Commissioner determines that it remain on the 20% rate of RCT.
29. While the Commissioner notes that this decision may be of disappointment to the Appellant, as the legislation permits the Appellant to have its RCT rate reviewed by the Respondent at any stage, it is therefore open to the Appellant to reapply to the

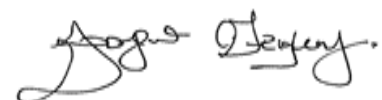
Respondent to have its RCT rate reviewed when it satisfies the provisions of section 530H TCA 1997.

### **Determination**

30. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof, in these particular taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable.”*

31. The Commissioner determines that the Appellant has not demonstrated the necessary burden of proof to establish that it fulfils the requirements of section 530H TCA 1997. Therefore the Appellant’s appeal is refused and the rate of 20% RCT is affirmed.
32. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant was correct to check to see whether its legal rights were correctly applied
33. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



**Andrew Feighery**

**Appeal Commissioner**

**10<sup>th</sup> August 2023**