



Between

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a refusal by the Revenue Commissioners (“the Respondent”) to allow the Appellant to avail of the Covid Restrictions Support Scheme (“CRSS”).
2. CRSS was introduced by section 11 of the Finance Act 2020. It amends the Taxes Consolidation Act 1997 (“TCA 1997”) by inserting two sections, section 484 and section 485.
3. Section 484 TCA 1997 sets out the objectives of the CRSS which it states are “*to provide the necessary stimulus to the economy.... so as to mitigate the effects, on the economy, of Covid-19...*”
4. Section 485 TCA 1997 sets out the eligibility criteria and details of the scheme. It permits eligible businesses to make a claim to the Respondent for a payment known as Advance Credit for Trading Expenses (ACTE).
5. Section 485 (24) TCA 1997 provides a right of appeal to the Commission where a Revenue Officer determines an entity does not meet the eligibility criteria for the scheme. In accordance with that section, the Appellant makes his appeal.

Background

6. The Appellant operates his business under the name “██████████” as a sole trader and is in the business of the ██████████. The ██████████ is manufactured at the Appellant’s factory which is situated in ██████████ and subsequently assembled on site at his customer’s premises.
7. On 1st March 2021, the Appellant registered for the CRSS.
8. On 2nd March 2021, the Respondent wrote to the Appellant and advised him that as he did not appear to meet the eligibility criteria necessary for registration under the CRSS, he was being refused registration under the scheme. The correspondence highlighted the following two criteria which it was deemed the Appellant did not fulfil:
 - 8.1. *“The trade must be carried on from a business premises that is located in a region subject to restrictions introduced in line with the Government’s ‘Living with Covid-19 Plan’, with the result that the business is required to prohibit or significantly restrict customers from accessing its premises to purchase goods or services;*

- 8.2. *It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or because customers to whom the business supplies goods or services are currently not purchasing these goods/services due to Covid-19 restrictions. To be eligible for the CRSS, a supplier business must meet the eligibility criteria in its own right; the business must be required by the specific terms of Covid restrictions to prohibit or significantly restrict customers from accessing its own business premises, with the result that the business is either required to temporarily close or to operate at a significantly reduced level.”*
9. Subsequently on 9th March 2021, the Respondent queried whether the Appellant had a showroom at his premises and requested photographic evidence of same.
10. The Appellant replied to this request the same day and stated:
- ‘...our manufacturing facility would not be considered a showroom.’*
11. On 10th March 2021, the Respondent issued the Appellant with a Notice of Determination. The Notice outlined the following:
- ‘Section 485 (1) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of the Finance Act 2020) provides that, for the purposes of the CRSS, the business premises is required to prohibit or significantly restrict customers from accessing its premises.’*
12. On 10th March 2021, the Appellant exercised his right of appeal to the Commission and submitted his Notice of Appeal. The appeal was heard in person on 14th March 2023.
13. The Appellant and his partner, [REDACTED] (“the Appellant’s partner”) represented the Appellant at the appeal. The Respondent was represented by Counsel, its solicitor and three members of its staff. In considering this appeal, the Commissioner had the benefit of written and oral submissions made by both parties which are considered below.

Documentation Presented to the Commission

14. The Appellant provided the Commission with a copy of the following documentation:
- 14.1. A professionally presented document titled “CRSS Appeals Hearing” prepared by the Appellant. This document contained the following information:
- 14.1.1. An introductory statement which stated:

'It has been noted that this business does not qualify as the premises is not considered a showroom. On numerous occasions, it has been outlined that the [REDACTED] are on display to clients within the premises to be reviewed prior to placing an order. It has also been noted that the clients' architects and/or engineers are required to visit the premises in order to inspect the [REDACTED] prior to delivery to site. Both an invoice and email outlining same have been provided on request. Please see below image of the premises, showing the exterior signage and panels on display, in further support of this.'

14.1.2. The referenced photographs included:

14.1.2.1. A photograph of the manufacturing facility. This photograph showed the exterior of the building which was a large metal clad building with four roller shutter type doors.

14.1.2.2. Examples of [REDACTED] on display. These photographs showed pictures of the interior of the building and photos of the [REDACTED] from various angles.

14.1.3. A summary of facts. This stated:

'Under the guidelines of the CRSS scheme "a business premises is defined as "a building or other similar physical structure from which a business activity is ordinarily carried on. Construction businesses do not generally qualify for CRSS because they do not provide their services from premises that their customers must access and instead provide their services at building sites or at a client's property."

It has been discussed and agreed on numerous occasions that the case of a [REDACTED] differs from that of [REDACTED]. The entire product is constructed off-site and within this physical premises. Clients are required to attend the premises in order to view [REDACTED] and to confirm an order. Similarly, their architects and/or engineers are required to inspect the [REDACTED] both pre and post manufacture, again within the physical premises.

A [REDACTED] is entirely constructed on site with no need for a physical premises in order to operate. In comparison, the manufacture of a client's [REDACTED] is impossible without an operational

premises. The end-product is completed, provided and overseen at this "customer-facing" premises.

The terms also note that "the scheme is designed to help traders meet their costs at a time when they cannot provide goods or services to their customers from their business premises, or can only do so to a limited extent, due to COVID-19 related restrictions." The circumstances of this claim are therefore in adherence with all qualifying factors listed in the CRSS eligibility criteria, and operations have been prohibited as a direct result of Covid-19 and the imposed restrictions.

This business does not qualify (sic) for the Sustainable Enterprise Fund as we do not operate internationally nor do we employ more than 10 people. The Covid-19 Business Aid Scheme (CBAS) is related to business sectors which remained open during the pandemic, such as wholesalers, suppliers and caterers, who experienced a decline in sales due to decreased demand. Off site (sic) manufacturing is not listed as premises have been forced to closed during this timeframe, restricting clients, architects and engineers from visiting and proceeding with orders. This has had a direct impact on our ability to function. Our current situation has therefore directly been impacted by this closure and as a result of Covid-19, adhering to all terms of the CRSS scheme.

I had been approved a business loan on account of acceptance of this CRSS payment following the approval letter received, which was deemed a system error (see attached). I received access to the approval section noting the amount to be received, an acceptance letter by post and also a recorded phonecall (sic) through our office line advising that the payment would be received within 3-5 working days. This has since been retracted, and has left me in an extremely difficult financial situation. I had since been advised that TAC were awaiting files to be returned from Revenue over a 6 week period, before being advised by Revenue through the Minister for Finance that no further files were requested. I have since received contact from Revenue requesting that the process is streamlined as they were pushed to return their decision to TAC.

Following various correspondence primarily via phonecall (sic), Revenue returned a decision of ineligibility namely on the grounds of a sentence which was quoted out of content; “our manufacturing facility would not be considered a showroom”. This was in response to a query of whether the business had a shopfront display and considered a showroom. Please see full sentence below sent on the 9th March 2021 for further context along with the photos provided above. I suffer severely from [REDACTED] and require assistance drafting these documents. A copy of my Assessment Report can be provided signed by [REDACTED] on request if required.

I do not appreciate this response being taken out of content, particularly given the fact that a showroom specifically has not been listed as a criteria of eligibility for this scheme. It merely states a business ‘premises’; nonetheless, I have provided proof above and have also attached a copy of the initial CRSS eligibility criteria for your review’.

14.1.4. The referred to extract of 9th March 2021 stated:

‘Our manufacturing facility would not be considered a showroom. Can you please clarify where the requirements request a showroom or shopfront to the premises?’

In order to secure and progress with sales, our clients’ engineers visit our manufacturing facility for inspection. Sales are also secured following visits from potential clients. As a result of Covid-19 and the current restrictions on both construction and travel, both have ceased.

We have been forced to close our premises. As [REDACTED] is manufactured off-site, differing from [REDACTED], operations cannot continue without an operational premises.

The above adheres to all conditions including the requirements set out in Parts 2 and 4 as outlined below:

- *A relevant business activity is a business activity carried out by a person in a business premises located in a geographical region subject to Covid restrictions.*
- *A business activity is, depending on the circumstances, a person’s trade or trading activities carried on from a*

business premises, the profits of which are chargeable to tax.

- *Where customers of the person's trade acquire goods or services from the person from a single business premises, then the person's business activity is the trade carried on from that business premises.*

Essentially, without our premises, our business does not exist.'

14.1.5. The Appellant added further comments to the above extract which stated:

'I have had various accountants and solicitors review the attached, all of which are unsure as to why this application has not yet been approved.

It has been noted that "construction businesses do not generally qualify", which would imply exceptions in some cases. I have yet to receive clarification on the reason(s) for the deemed ineligibility in the case of an [REDACTED] company. Within the term of the scheme, nowhere does it state that the premises must be considered a "showroom"; which is the very grounds for the deemed ineligibility, despite having both a shop front and [REDACTED] on display.

I would sincerely appreciate if this could be reviewed and addressed. Should any further information be required, please contact me at the details below.'

14.1.6. A copy of a 'typical' quotation. This was addressed to the Appellant's customer and under 'description' it detailed the works to be undertaken. The payment structure was set out as follows on that quotation:

- 10% Booking Deposit
- 40% on signing to commence production
- 40% prior to delivery following inspection
- 10% on completion of above works

14.1.7. The four invoices detailing the above payment structure. The total of the provided invoice was €82,401 inclusive of VAT at 13.5%.

Witness Evidence

15. The Appellant gave evidence on his own behalf during the hearing. He stated that ordinarily the customer or their architect/engineer attended the business premises. The purpose of this visit was to examine the process involved and to enable the customer select various available options such as [REDACTED] that was affixed to [REDACTED]
16. The Appellant submitted that the majority of his customers self-build [REDACTED]. He stated that the majority of these customers attended his business premises. He explained that as the average cost of a [REDACTED] was around [REDACTED] that this was often the largest purchase his customers had ever, or would ever, make. As such, the Appellant submitted that customers attended his business premises so that they could 'verify' that they were dealing with the right person and gain comfort that the Appellant would deliver the ordered product to a high quality. The Appellant submitted that this comfort was particularly important to customers as they were required to make upfront payments before receiving the product.
17. In addition, the Appellant said that architects/engineers are required to attend the business premises so that they could "sign off" the particular phase of work completed. The Appellant stated as most of the work was completed at his premises on a phased basis that this necessarily required the architect/engineer to attend the premises. The importance of this, the Appellant explained, was as most customers were building their properties with mortgage funds, the mortgage providers required an architect/engineer sign-off on the level of the project completion before they would release the *pro-rata* funds to its customer.
18. Under cross examination, the Appellant explained as he was [REDACTED] and suffered with [REDACTED], he "deals with information differently". When asked in correspondence by the Respondent if he had a showroom for his customers, he stated that he associated a "showroom" with a car showroom with a glass front. Hence, when he stated "our manufacturing facility would not be a showroom", he meant it in that context.
19. The Appellant further advised that he had a previous accountant who didn't submit tax returns on his behalf for a period of some two years but he had a new accountant who was now in the process of incorporating his business and 'tidying everything up'. When the Respondent's Counsel stated that his current tax records showed that he had not submitted tax returns for 2019, 2020 or 2021, the Appellant stated that he was certain they had been filed but could not be positive.

20. In reply to the Respondent Counsel's question as to why the November/December 2019 VAT return was filed 395 days late, the Appellant stated "*I don't know, I know it was late, I don't know how many days it was late*". When asked the same question for January/February 2020 (which was filed 341 days late) and March/April 2020 (which was filed 281 days late), the Appellant stated:

'As I said I had an accountant who didn't file returns for well over a year and we had problems getting returns back off them. Also there was files sent to the Revenue Commissioner for verification in [REDACTED] and we had to get them back as well so.'

21. Absent tax returns for those years, the Respondent's Counsel stated that the Respondent had used the figures from his VAT returns for the years 2019, 2020 and 2021 to estimate his sales for those years. Those estimates were €60,383 for 2019, €152,802 and €150,337 for 2021. When asked whether those figures appeared correct, the Appellant stated "*it would, probably yeah...but I can't tell you for certain*".

22. The Appellant further confirmed that despite the Respondent's supplied print-out which stated that he was not in possession of a tax clearance certificate for the periods under appeal, he could not positively state he was in possession of a tax clearance certificate but he "thought" he was in possession of same as he recalled having same when originally completing his application for CRSS.

Submissions

Appellant

23. The Appellant stated as he was involved in the construction sector his business was able to operate during most of the imposed Covid-19 related lockdowns. However, he explained in 2021, when the Government implemented the most severe lockdown which required the majority of the construction sector to close, he was required to close his business for a three month period from 11th January 2021. The effect of this closure on his personal life and business operations, he stated was "detrimental".

24. The Appellant submitted absent his showroom the business would have no customers. He explained that these showrooms were essential as customers attended them to gain comfort with his business operation and to select the particular product they required.

25. The Appellant explained that ordinarily a customer and/or their architect/engineer provided a set of construction plans to him. From those plans, the Appellant's designer would design [REDACTED] necessary to build the property and this would be

presented to the customer at the Appellant's business premises. Once presented, the customer would be taken to the showroom where they would select, from the available samples, various options integrated into [REDACTED] such as [REDACTED] [REDACTED]. Following those selections, the customer would be provided with a price for the project and once accepted, a timetable for delivery would be agreed before work commenced.

26. The Appellant further explained that all production took place on his premises and at various phases of completion the customer's architect or engineer would attend those premises for sign off. Upon completion, the [REDACTED] was transported to the customer's site where it was erected in a [REDACTED] type manner.
27. The Appellant submitted, owing to the imposed Covid restrictions, as his customers were unable to travel to his business premises and as he was required to close the business in any event, that he was required to prohibit his customers from attending those business premises. As such, the Appellant submitted that he fulfilled the CRSS eligibility criteria and the Respondent had erred in not making payments to him under that scheme.
28. The Appellant further submitted that his trade had been affected as a direct result of the closure of the premises rather than due to a reduction in customer demand. He explained despite Covid restrictions that demand for his product had actually increased as customers [REDACTED] [REDACTED] in order to recoup time lost during lockdown.
29. The Appellant stated that he had initially been refused eligibility by the Respondent on the CRSS but subsequently received an approval letter. This approval letter stated that payment would be received within the next 3-5 working days. Upon receipt of this approval letter, the Appellant explained that he was eligible for a business loan which he required to keep his business operational.
30. Subsequently, the Appellant advised that he received a letter from the Respondent apologising for a "system error" which resulted in him being wrongly approved for inclusion in the CRSS. The Appellant submitted that this error not only resulted in him being denied CRSS payments but also, as the business loan was contingent on CRSS, eligibility, denied him access to those funds. The Appellant submitted that this left his business in a precarious position and as such, it was unfair for him to be denied CRSS payments.
31. In conclusion, the Appellant submitted that his business fulfilled the eligibility criteria for payments under the CRSS. In addition, as the Respondent had wrongly informed him

that his business was eligible for CRSS payments, owing to the impact on his business and the associated unfairness of that error, the Appellant submitted that the Commission should allow his appeal.

Respondent

32. The Respondent stated in order for the Appellant's appeal to succeed, it was necessary for him to establish that he was required to prohibit or substantially restrict customers from accessing his business premises. The Respondent submitted as the Appellant detailed in correspondence that he did not have a premises suitable for customer attendance, then he was denied eligibility in the CRSS.
33. The Respondent submitted that as the Appellant hires subcontractors to [REDACTED] on the customer's premises, then the place where the product is supplied is at the customer's premises and not the Appellant's business premises. As such, the Respondent submitted that the Appellant did not need his customers to attend his business premises and as this was an essential requirement for CRSS eligibility, then relief ought to be denied to the Appellant.
34. In addition, the Respondent submitted that the Appellant failed to satisfy additional requirements to be entitled to CRSS registration. In the first instance, the Respondent submitted that the Appellant's turnover was required to have decreased by 75% of the 2019 turnover level under section 485 (4) TCA 1997, but had not done so.
35. The Respondent explained, as the Appellant had not filed his tax returns for the years 2019 to 2021 inclusive at the time of applying for registration under the CRSS, that it had analysed the Appellant's Return of Trading Details ("RTDs") for the period under appeal and noted that the Appellant's turnover had increased from the 2019 level of €60,383 to €152,802 in 2020 and €150,387 in 2021. "RTDs" are a filing obligation placed on Valued Added Taxation ("VAT") registered taxpayers which requires them to file with the Respondent a breakdown of the supply of goods and services, imports and deductible inputs split across the various VAT rates during a financial year. The Respondent accepted that its percentage breakdown of the turnover reduction was estimated from those RTD returns but submitted that as the Appellant had not provided any figures which disagreed with its calculations, then this was evidence that the Appellant failed to satisfy the turnover reduction criteria.
36. The Respondent advised that the Appellant was required to have his VAT returns and obligations complied with in accordance with section 485 (5) (d) TCA 1997 to be eligible for CRSS registration. As the Appellant had filed his November/December 2019,

January/February 2020 and March/April 2020 VAT returns on average a year after they were due, the Respondent submitted that the Appellant had not fulfilled this statutory requirement and this further prevented the Appellant's appeal from succeeding.

37. In addition, the Respondent stated that the Appellant was required to be eligible for a tax clearance certificate under the provisions of section 485 (5) (e) TCA 1997 to register for CRSS. The Respondent submitted that as the Appellant did not hold such a certificate, and was not so eligible, owing to the outstanding income tax and VAT returns, then this resulted in him being further ineligible for registration under the CRSS.
38. In summation the Respondent submitted that the Appellant failed to satisfy a number of criteria required under the legislation for CRSS eligibility. In particular, the Respondent submitted that the Appellant failed to satisfy the requirement that he was required to prohibit or significantly restrict his customers from accessing his business premises, that his turnover had not decreased by the amount specified under section 485 (4) TCA 1997 and as he had outstanding VAT liabilities and was not in possession of a tax clearance certificate for the claim period, he failed to satisfy the requirements under section 485 (5) TCA 1997. In those circumstances, the Respondent submitted that the Commission should refuse the Appellant's appeal.

Material Facts

39. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent, and are required eligibility conditions for inclusion on the CRSS:
 - 39.1. The Appellant intended to (and subsequently did) carry on business activities after the "Covid-19 restrictions" were lifted.
 - 39.2. The Appellant had complied with his VAT return filing requirements as at the date of his registration for CRSS.
40. In addition, the Commissioner found the following material facts from the evidence presented at the hearing:
 - 40.1. The Appellant's business activity is the [REDACTED]
 - 40.2. The Appellant's operates his business from a "business premises".
 - 40.3. The Appellant commenced trading activities before 26th December 2019.

- 40.4. The Appellant was not in possession of, nor entitled to a tax clearance certificate when he submitted his CRSS claim on 1st March 2021.
- 40.5. On 1st March 2021, the Appellant had not filed his income tax returns for the tax years 2019, 2020 and 2021.
- 40.6. The Appellant's estimated turnover was €60,383 in 2019, €152,802 in 2020 and €150,337 in 2021.
- 40.7. A determination notice issued to the Appellant from the Respondent on 10th March 2021 denying eligibility under the CRSS.

Analysis

41. At the conclusion of the appeal, the Commissioner explained that section 485 (5) (e) TCA 1997 mandated the Appellant to have been "*eligible for a tax clearance certificate...*" at the date of his CRSS application. Absent this, the Commissioner explained that the Appellant's appeal could not succeed.
42. In addition, the Commissioner advised the Appellant for his appeal to succeed, he was required to produce evidence which established that his turnover had decreased at the date of his claim to 25% of the 2019 level under the provisions of section 485 (4) (b) (i) TCA 1997.
43. In noting the Appellant was not legally represented at the appeal hearing and as he was insistent that he held tax clearance at the date he applied for CRSS registration, the Commissioner gave the Appellant 14 days after the conclusion of the appeal in which to submit additional documentation or information in support of his appeal.
44. As no communication has been received by the Commission to date, it follows that the Appellant was mistaken in his belief and therefore the Commissioner is required to determine the Appellant's appeal on the basis that he was not "eligible for a tax clearance certificate" nor had his turnover reduced to 25% of the 2019 recorded turnover at the date he submitted his application for CRSS support.
45. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners and ors.* 2020 IEHC 552 ("*Perrigo*") where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes

Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the

statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.”

46. Section 485(4) (b) (i) TCA 1997 applies to a person

“who carries on a relevant business activity and who –

in accordance with guidelines published by the Revenue Commissioners under subsection (22), demonstrates to the satisfaction of the Revenue Commissioners that, in the claim period, because of applicable business restrictions provisions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of the person is carried on—

...

(II) the relevant business activity of the person is disrupted,

such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount...”

47. “Relevant turnover amount” is defined by section 485 (4) (1) (a) TCA 1997 as:

“where a person carries on an established relevant business activity, an amount determined by the formula—

A x B

where—

A is the average weekly turnover from the established relevant business activity, and

B is the total number of full weeks in the claim period...”

48. Section 485 (4) (1) (a) TCA 1997 further defines an “established relevant business activity” as meaning “*in relation to a person, a relevant business activity commenced by that person before 26 December 2019*” and “average weekly turnover from the established business activity” as meaning “*the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;*”
49. As the Appellant commenced trading activities before 26th December 2019, it follows that for his appeal to succeed his turnover at the date of his CRSS application should have reduced to 25% of the 2019 level. As no evidence was presented to the Commission to demonstrate this required reduction, it follows that the Appellant has not fulfilled this requirement and therefore his appeal cannot succeed.
50. For the purpose of completeness, the Commissioner notes that the Appellant did not fulfil the requirements of section 485 (5) (d) TCA 1997, as no evidence was presented to the Commission which establishes that the Appellant was in possession of or entitled to a tax clearance as of that date. The Commissioner further notes that while the Appellant was late in filing his VAT returns for the periods November/December 2019 to March/April 2020 inclusive, as at the date of his CRSS application, he had complied with his VAT filing requirements. However, absent the requisite tax clearance certificate and required turnover reduction, the Appellant’s appeal cannot succeed.
51. As the Appellant’s appeal cannot succeed, the Commissioner is not required to consider whether the provisions of section 485 TCA 1997 required the Appellant to have prohibited or significantly restricted his customers from accessing his business premises.
52. The burden of proof lies with the Appellant in appeals made in accordance with section 485 (24) TCA 1997. As confirmed by Charlton J at paragraph 22 in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49:
- “The burden of proof in this appeal process is ... on the taxpayer. This is not a plenary civil hearing...”*
53. The Commissioner finds that the Appellant has not discharged the burden of proof in this appeal and finds that the Appellant has not shown that he was entitled to avail of the provisions of section 485 TCA 1997.
54. During the course of the hearing the Appellant submitted that the Respondent’s erroneous notification that he was entitled to avail of the CRSS and was to be awarded

payments under that scheme left him and the business in a precarious situation. While, regrettable, the Appellant is reminded, as in previous Determinations of the Commission that the Respondent was operating in difficult times with reduced staff numbers and this invariably caused a degree of error in its administration of the CRSS.

55. Turning to the Appellant's submissions that he was treated in an unfair manner. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. Section 6(2) of the Finance (Tax Appeals) Act 2015 sets out the functions of Appeal Commissioners appointed pursuant to that Act. Appeal Commissioners therefore have the jurisdiction set out in statute and do not have jurisdiction to consider or decide on the constitutionality of legislation or to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts.

56. In *Lee v Revenue Commissioners* IECA 18, Murray J. held as follows:

“From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The ‘incidental questions’ which the case law acknowledges as falling within the Commissioners’ jurisdiction are questions that are ‘incidental’ to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment.”

57. Therefore, the jurisdiction of an Appeal Commissioner does not extend to the provision of equitable relief and as such the Commissioner is unable to consider the Appellant's submissions which seek to establish that he was treated in an unfair manner.

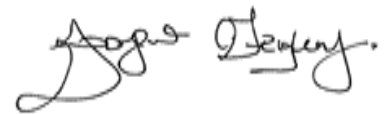
Determination

58. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in demonstrating his eligibility for inclusion in the CRSS.

59. It is understandable that the Appellant may well be disappointed with the outcome of his appeal but the Commissioner has no discretion to deviate from the legislation. The

Appellant was correct to avail of his right of appeal and to check his legal entitlements. The Commissioner hopes that the Appellant's business has fully recovered with the easing of Covid restrictions.

60. 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

11th September 2023

Appendix 1 - Legislation and Guidelines

Section 484 TCA 1997 – “Objectives of Section 485, purposes for which its provisions are enacted and certain duty of Minister for Finance respecting those provisions’ operation” provides:

- (1) (a) The objectives of section 485 are to—
- (i) provide the necessary stimulus to the economy (in addition to that provided by Part 7 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and the Financial Provisions (Covid-19) (No. 2) Act 2020) so as to mitigate the effects, on the economy, of Covid-19, and
 - (ii) if, as of 1 January 2021, no agreement stands entered into between the European Union and the United Kingdom (with respect to the future relations between them on the relevant matters), mitigate the effects on the economy which are apprehended may arise therefrom.
- (b) In paragraph (a) ‘relevant matters’ means the matters described in Part II of the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom³.
- (c) The purposes for which the several provisions of section 485 (in this section referred to as the ‘Covid Restrictions Support Scheme’) are, in furtherance of the foregoing objectives, enacted are:
- (i) in addition to the provision of basic mechanisms to fulfil those objectives, to ensure the efficient use of the Covid Restrictions Support Scheme so as to minimise the cost to the Exchequer of the scheme (so far as consistent with fulfilment of those objectives);
 - (ii) to avoid, where possible, allocation of resources to sectors of the economy that are not in need of direct stimulus by means of the Covid Restrictions Support Scheme (and which sectors may reasonably be expected to be restored to financial viability and an eventual growth path by the indirect effects of the scheme);
 - (iii) to protect the public finances through mechanisms for the discontinuance or amendment of one or more of the payments under the Covid Restrictions Support Scheme (or for their variation) in defined circumstances;
 - (iv) to take account of the need to reflect changes in circumstances of persons who, as businesses, are persons in respect of whom payments under the Covid Restrictions Support Scheme are being made, in cases

where such persons avail themselves of other financial supports provided by the State;

(v) to take account of changes in the State's economic circumstances and the demands on its financial resources which may occur in the remainder of the current financial year and thereafter.

(d) It shall be the duty of the Minister for Finance to monitor and superintend the administration of the Covid Restrictions Support Scheme (but this paragraph does not derogate from the function of the care and management conferred on the Revenue Commissioners by section 485(21)).

(e) Without prejudice to the generality of paragraph (d), the Minister for Finance shall cause an assessment, at such intervals as he or she considers appropriate but no less frequently than every 3 months beginning on 13 October 2020, of the following, and any other relevant matters, to be made—

(i) up-to-date data compiled by the Department of Finance relating to the State's receipts and expenditure,

(ii) up-to-date data from the register commonly referred to as the 'Live Register' and data related to that register supplied to the Department of Finance by the Department of Business, Enterprise and Innovation (whether data compiled by that last mentioned Department of State from its own sources or those available to it from sources maintained elsewhere in the Public Service),

(iii) such other data as the Minister for Finance may consider relevant in relation to the impact from, and effects of, Covid-19 or the fact (should that be so) of there not being an agreement of the kind referred to in paragraph (a)(ii), and, if the following is commissioned, by reference to an assessment, on economic grounds, of the Covid Restrictions Support Scheme that may be commissioned by the Minister for Finance and any opinion as to the sustainability of the scheme expressed therein.

(f) Following an assessment under paragraph (e), it shall be the duty of the Minister for Finance, after consultation with the Minister for Public Expenditure and Reform, to determine whether it is necessary to exercise any or all of the powers under subparagraphs (i) to (vi) of subsection (2)(a) so, as appropriate, to—

(i) fulfil, better, the objectives specified in paragraph (a), or

(ii) facilitate the furtherance of any of the purposes specified in paragraph (c),

and, if the Minister for Finance determines that such is necessary, the powers

under one, or more than one, as provided in that subsection (2)(a), of those subparagraphs (i) to (vi) shall become and be exercisable by the Minister for Finance.

(2) (a) Where the Minister for Finance makes a determination of the kind lastly referred to in subsection (1) (f), the Minister for Finance shall, as he or she deems fit and necessary—

(i) make an order that the reference in the definition of ‘Covid restrictions’ in section 485(1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period shall be limited in such respects as are specified in the order (including, if the Minister for Finance considers appropriate, by the specification of a requirement, with respect to the restriction of certain business activity, that particular business activity must be affected by the restriction to a specified extent) and an order under this subparagraph shall make such additional modifications to the provisions of section 485 as the Minister for Finance may consider necessary and appropriate in consequence of the foregoing limitation,

(ii) make an order that the day referred to in the definition of ‘specified period’ in section 485(1) as the day on which the period there referred to shall expire shall be such day as is later than 31 March 2021 (but not later than 31 December 2021) as the Minister for Finance considers appropriate and specifies in the order,

(iii) make an order that the percentage specified in section 485(4) (b) (i) shall be such a percentage, that is greater or lower than the percentage specified in that provision, as the Minister for Finance—

(i) considers necessary to—

*(A) fulfil, better, the objectives specified in subsection (1) (a),
or*

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

And

(ii) specifies in the order,

(iv) make an order that the percentage specified in subparagraph (i) (i) or subparagraph (ii)(i) of section 485 (7) (a) shall be such a percentage, that is

greater or lower than the percentage specified in that subparagraph (i)(I) or subparagraph (ii)(I), as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a),

or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(v) make an order that the percentage referred to in subparagraph (i) (II) or subparagraph (ii)(II) of section 485 (7) (a) shall be such a percentage, that is greater or lower than that percentage specified in that subparagraph (i)(II) or subparagraph (ii)(II), as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a),

or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(vi) make an order either that subsection (8) of section 485 shall cease to be in operation on and from such day, or that the election referred to in paragraph (b) of that subsection, which that subsection enables a qualifying person to make, shall not be exercisable save in such circumstances, as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a),

or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

and any matter that is provided for in the preceding subparagraphs is referred to in section 485(3) as a 'modification'.

(b) Where an order under subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a) is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made unless a resolution approving of the draft has been passed by that House.

Section 485 TCA 1997, "Covid Restrictions Support Scheme" provides:

(1) *In this section—*

"applicable business restrictions provisions" shall be construed in the manner provided for in the definition of 'Covid restrictions period' in this subsection;

"business activity", in relation to a person carrying on a trade either solely or in partnership, means—

(a) where customers of the trade acquire goods or services from that person from one business premises, the activities of the trade, or

(b) where customers of the trade acquire goods or services from that person from more than one business premises, the activities of the trade relevant to each business premises,

and where customers of the trade acquire goods or services from that person other than through attending at a business premises, that portion of the trade which relates to transactions effected in that manner shall be deemed to relate to the business premises or, where there is more than one business premises, shall be apportioned between such business premises on a just and reasonable basis;

"business premises", in relation to a business activity, means a building or other similar fixed physical structure from which a business activity is ordinarily carried on;

"chargeable period" has the same meaning as in section 321 (2);

"claim period" means a Covid restrictions period, or a Covid restrictions extension period, as the context requires;

"Covid-19" has the same meaning as it has in the Emergency Measures in the Public Interest (Covid-19) Act 2020;

“Covid restrictions” means restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947, being restrictions for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

“Covid restrictions extension period” has the meaning assigned to it in subsection (2);

“Covid restrictions period”, in relation to a relevant business activity carried on by a person, means a period for which the person is required by provisions of Covid restrictions to prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity is carried on (referred to in this section as ‘applicable business restrictions provisions’) and is a period which commences on the Covid restrictions period commencement date and ends on the Covid restrictions period end date;

“Covid restrictions period commencement date”, in relation to a relevant business activity, means the later of—

(a) 13 October 2020, or

(b) the day on which applicable business restrictions provisions come into operation (not having been in operation on the day immediately preceding that day);

“Covid restrictions period end date”, in relation to a relevant business activity, means the earlier of—

(a) the day which is three weeks after the Covid restrictions period commencement date,

(b) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(c) the day preceding the first day following the Covid restrictions period commencement date, on which the applicable business restrictions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in paragraph (b)), or

(d) 31 March 2021,

and, for the purposes of paragraph (c)—

(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that paragraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations;

“partnership trade” has the same meaning as in section 1007;

“precedent partner”, in relation to a partnership and a partnership trade, has the same meaning as in section 1007;

relevant business activity” has the meaning assigned to it in subsection (4);

“relevant geographical region” means a geographical location for which Covid restrictions are in operation;

“specified period” means the period commencing on 13 October 2020 and expiring on 31 March 2021;

“tax” means income tax or corporation tax;

“trade” means a trade any profits or gains arising from which is chargeable to tax under Case I of Schedule D.

- (2) (a) Subject to subsection (8), where, in relation to a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions period, the period for which those restrictions continue to so apply is referred to in this section as a ‘Covid restrictions extension period’, which period commences on the foregoing day (referred to in this section as a ‘Covid restrictions extension period commencement date’) and ends on the Covid restrictions extension period end date.*

(b) In this section, ‘Covid restrictions extension period end date’, in relation to a relevant business activity, means the earlier of—

(i) the day which is three weeks after the Covid restrictions extension period commencement date,

(ii) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(iii) the day preceding the first day, following the Covid restrictions extension period commencement date, on which the applicable business restrictions provisions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in subparagraph (ii)), or

(iv) 31 March 2021,

and, for the purposes of subparagraph (iii)—

(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that subparagraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations.

(c) Where, in relation a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions extension period, the period for which those restrictions continue to so apply is also referred in this subsection as a 'Covid restrictions extension period' which period commences on the foregoing day and ends on the Covid restrictions extension period end date.

(3) The following provisions made in this section, namely:

(a) the reference in the definition of 'Covid restrictions' in subsection (1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of

Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

(b) the specification of 31 March 2021 in the definition of ‘specified period’ in subsection (1) as the date on which the period there referred to shall expire;

(c) the specification of 25 per cent in subsection (4) (b) (i);

(d) the specification of 10 per cent in subsection (7)(a)(i)(I) or (ii)(I);

(e) the specification of 5 per cent in subsection (7) (a) (i) (II) or (ii) (II);

(f) subsection (8) and the election referred to in paragraph (b) of it which a qualifying person is, by virtue of that subsection, enabled to make,

shall, together with any other provision of this section that the following modification relates to, be construed and operate subject to any modification that is provided for in an order made under section 485(2)(a) and which is in force.

(4) (a) In this section—

“average weekly turnover from the established relevant business activity” means the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;

“average weekly turnover from the new relevant business activity”, means the average weekly turnover of the person, carrying on the activity, in respect of the new relevant business activity in the period commencing on the date on which the person commenced the business activity and ending on 12 October 2020;

“established relevant business activity” means, in relation to a person, a relevant business activity commenced by that person before 26 December 2019;

“new relevant business activity” means, in relation to a person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020;

“relevant business activity”, in relation to a person, means a business activity which is carried on by that person in a business premises located wholly in a relevant geographical region;

“relevant turnover amount” means—

- (i) *where a person carries on an established relevant business activity, an amount determined by the formula—*

$$A \times B$$

where—

A is the average weekly turnover from the established relevant business activity, and

B is the total number of full weeks in the claim period,

or

- (ii) *where a person carries on a new relevant business activity, an amount determined by the formula—*

$$A \times B$$

where—

A is the average weekly turnover from the new relevant business activity, and

B is the total number of full weeks that comprise the claim period.

- (b) *Subject to subsections (5) and (6), this section shall apply to a person who carries on a relevant business activity and who—*

(i) in accordance with guidelines published by the Revenue Commissioners under subsection (22), demonstrates to the satisfaction of the Revenue Commissioners that, in the claim period, because of applicable business restrictions provisions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of the person is carried on—

(I) the relevant business activity of the person is temporarily suspended, or

(II) the relevant business activity of the person is disrupted,

such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount, and

(ii) satisfies the conditions specified in subsection (5),

(hereafter referred to in this section as a 'qualifying person').

(5) The conditions referred to in subsection (4) (b) (ii) are—

(a) the person has logged on to the online system of the Revenue Commissioners (in this section referred to as 'ROS') and applied on ROS to be registered as a person to whom this section applies and as part of that registration provides such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of registration and which particulars shall include those specified in subsection (14),

(b) for the claim period, the person completes an electronic claim form on ROS containing such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of determining the claim and which particulars shall include those specified in subsection (14),

(c) for the claim period, the person makes a declaration to the Revenue Commissioners through ROS that the person satisfies the conditions in this section to be regarded as a qualifying person for that claim period,

(d) the person has complied with any obligations that apply to that person in respect of the registration for, and furnishing of returns relating to, value-added tax,

(e) the person is throughout the claim period eligible for a tax clearance certificate, within the meaning of section 1095, to be issued to the person, and

(f) the person would, but for the Covid restrictions, carry on the business activity, that is a relevant business activity, at the business premises in a relevant geographical region, and intends to carry on that activity when applicable business restrictions provisions cease to be in operation in relation to that relevant business activity.

(6) Where a relevant business activity of a qualifying person does not constitute a whole trade carried on by that person, then, for the purposes of determining whether the requirements in subsection (4)(b) (i) are met, the relevant business activity shall be treated as if it were a separate trade and the turnover of the whole trade shall be apportioned between the separate trade and the other part of the trade on a just and reasonable basis, and the amount of turnover attributed to the separate trade during the claim period shall not be less than the amount that would be attributed to the separate trade if it were carried on by a distinct and separate person engaged in that relevant business activity.

(7) Subject to subsections (10) and (11), on making a claim under this section, a qualifying person shall, in respect of each full week comprised within the claim period, be entitled to an amount equal to the lower of—

(a) (i) where the qualifying person carries on an established relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the average weekly turnover from the established relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the average weekly turnover from the established relevant business activity as exceeds €20,000,

Or

(iii) where the qualifying person carries on a new relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the person's average weekly turnover from the new relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the person's average weekly turnover from the new relevant business activity as exceeds €20,000,

and

(b) €5,000 per week,

and any amount payable under this section is referred to in this section as an 'advance credit for trading expenses'.

(8) (a) Where, in relation to a relevant business activity carried on by a person—

(i) applicable business restrictions provisions were in operation such that a qualifying person made a claim under this section in respect of a claim period and that claim, taken together with any claims made by the person immediately preceding that claim, is in respect of a continuous period of not less than three weeks, and

(ii) those applicable business restrictions provisions cease to be in operation, then, where that qualifying person, within a reasonable period of time from the date on which the applicable business restrictions provisions cease to be in operation, resumes or continues, as the case may be, supplying goods or services to customers from the business premises in which the qualifying

person's relevant business activity is carried on, that qualifying person may make an election under paragraph (b).

(b) Where no part of the week immediately following the date on which the applicable business restrictions provisions ceased to be in operation in respect of a relevant business activity would otherwise form part of a Covid restrictions period or a Covid restrictions extension period, a qualifying person to whom paragraph (a) applies may elect to treat that week as a Covid restrictions extension period and may make a claim under this section in respect of that period.

(9) A claim made under this section in respect of an advance credit for trading expenses shall be made—

(a) subject to paragraph (b), no later than—

(i) eight weeks from the date on which the claim period, to which the claim relates, commences, or

*(ii) if the date on which the qualifying person is registered as a person to whom this section applies (following an application which is made in accordance with subsection (5) (a) and within the period of eight weeks specified in subparagraph (i)) falls on a date subsequent to the expiry of the period of eight weeks so specified, three weeks from the date on which the person is so registered,
and*

(b) in the case of a claim made under this section that is referred to in subsection (8), no later than eight weeks from the date on which the applicable business restrictions provisions concerned cease to be in operation.

(10) Where, for any week comprised within a claim period, a person is a qualifying person in relation to more than one relevant business activity carried on from the same business premises, and a claim is made in relation to each relevant business activity, the amount the qualifying person shall be entitled to claim under this section in respect of all of those relevant business activities for any weekly period shall not exceed the amount specified in subsection (7)(b) and subsection (7) shall apply with any necessary modifications to give effect to this subsection.

(11) (a) Where a relevant business activity in respect of which a person is a qualifying person is carried on as the whole or part of a partnership trade, then any claim made under this section for an advance credit for trading expenses in respect of the

relevant business activity shall be made by the precedent partner on behalf of the partnership and each of the partners in that partnership and the maximum amount of any such claim made in respect of the relevant business activity in any weekly period shall not exceed the lower of the amounts specified in subsection (7)(a)(i) or (a)(ii), as the case may be.

(b) Where a claim is made under this section by a precedent partner for an advance credit for trading expenses in respect of a relevant business activity carried on as the whole or part of a partnership trade then—

(i) for the purposes of subsections (15) and (16), each partner shall be deemed to have claimed, in respect of that partner's several trade, a portion of the advance credit for trading expenses calculated as—

A x B

where—

*A is the advance credit for trading expenses claimed by the precedent partner,
and*

B is the partnership percentage at the commencement of the claim period,

(ii) the precedent partner shall, in respect of each such claim, provide a statement to each partner in the partnership containing the following particulars—

(I) the partnership name and its business address,

(II) the amount of advance credit for trading expenses claimed by the precedent partner on behalf of the partnership and each partner,

(III) the profit percentage for each partner,

(IV) the portion of the advance credit for trading expenses allocated to each partner,

(V) the commencement and cessation date of the claim period, and

(VI) the chargeable period of the partnership trade in which the claim period commences,

(iii) for the purposes of subsections (17) and (18), references to a person making a claim shall be taken as references to the precedent partner making the claim on behalf of the partnership and each of its partners, and

(iv) for the purposes of subsection (19), section 1077E shall apply as if references to a person were references to each partner and the references to a claim were a reference to a claim deemed to have been made by each partner under subparagraph (i).

(12) Any reference to ‘turnover’ in this section means any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, except for any amount recognised as turnover in that particular period of time due to a change in accounting policy.

(13) Where a person makes a claim for an advance credit for trading expenses under this section, in computing the amount of the profits or gains of the trade, to which the relevant business activity relates, for the chargeable period in which the claim period commences, the amount of any disbursement or expense which is allowable as a deduction, having regard to section 81, shall be reduced by the amount of the advance credit for trading expenses and the advance credit for trading expenses shall not otherwise be taken into account in computing the amount of the profits or gains of the trade for that chargeable period.

(14) (a) The particulars referred to in paragraphs (a) and (b) of subsection (5) are those particulars the Revenue Commissioners consider necessary and appropriate for the purposes of determining a claim made under this section, including—

(i) in relation to a qualifying person—

(I) name,

(II) address, including Eircode, and

(III) tax registration number,

and

(ii) in relation to a relevant business activity—

(I) name under which the business activity is carried on,

(II) a description of the business activity,

(III) address, including Eircode, of the business premises where the business activity is carried on,

(IV) where the business activity was commenced prior to 26 December 2019, the average weekly turnover of the qualifying person in respect of the

business activity in the period commencing on 1 January 2019 and ending on 31 December 2019,

(V) where a trade is carried on in more than one business premises, the turnover of the qualifying person in respect of the business premises, to which the relevant business activity relates, in the period commencing on 1 January 2019 and ending on 31 December 2019,

(VI) where a business activity is a new relevant business activity, the date of commencement of the activity and the amount of turnover in respect of the new business activity beginning on the date of commencement and ending on 12 October 2020,

(VII) the average weekly turnover in respect of an established relevant business activity or a new relevant business activity, as the case may be,

(VIII) in respect of tax, within the meaning of section 2 of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clauses (IV) and (VI) the amount of tax that became due in accordance with section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010,

(IX) such other total income excluding the relevant business turnover in respect of the total tax returned in respect of section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clause (IV) or (VI),

(X) expected percentage reduction in turnover of the qualifying person in respect of the business activity in the claim period, and

(XI) such other particulars, as the Revenue Commissioners may require.

(b) Subsequent to receiving the information requested under this section, the Revenue Commissioners may seek further particulars or evidence for the purposes of determining the claim.

- (15) Where a company makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the company has not repaid the amount as required by subsection (17)(a)(II)—*

(a) the company shall be charged to tax under Case IV of Schedule D for the chargeable period in which the claim period commences, on an amount equal to 4 times so much of the amount under this section as was not so permitted to be made, and

(b) an amount chargeable to tax under this subsection shall be treated as income against which no loss, deficit, credit, expense or allowance may be set off, and shall not form part of the income of a company for the purposes of calculating a surcharge under section 440.

(16) (a) Where an individual makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the individual has not repaid the amount as required by subsection (17)(a)(II), the individual shall be deemed to have received an amount of income equal to 5 times so much of the amount under this section as was not so permitted to be made (referred to in this subsection as the 'unauthorised amount').

(b) The unauthorised amount shall, notwithstanding any other provision of the Tax Acts, be deemed to be an amount of income, arising on the first day of the claim period that is chargeable to income tax under Case IV of Schedule D.

(c) Where the taxable income of an individual includes an amount pursuant to paragraph (b), the part of the taxable income equal to that amount shall be chargeable to income tax at the standard rate in force at the time of the payment of the advance credit for trading expenses but shall not—

(i) form part of the reckonable earnings chargeable to an amount of Pay Related Social Insurance Contributions under the Social Welfare Acts, and

(ii) be an amount on which a levy or charge is required, by or under Part 18D.

(d) Notwithstanding section 458 or any other provision of the Tax Acts, in calculating the tax payable (within the meaning of Part 41A) on the unauthorised amount under this subsection, there shall be allowed no deduction, relief, tax credit or reduction in tax.

(e) In applying section 188 or Chapter 2A of Part 15, no account shall be taken of any income deemed to arise under this subsection or any income tax payable on that income.

(17) (a) *Where subsequent to a person making a claim under this section, it transpires that -*

(i) the requirements in subsection (4) (b) are not met (and a claim in respect of which those requirements are not met is referred to hereafter in this subsection as an 'invalid claim'), or

(ii) the amount claimed exceeds the amount the person is entitled to claim under this section (and a claim to which this subparagraph applies is referred to hereafter in this subsection as an 'overclaim'),

then the person shall, without unreasonable delay—

(I) notify the Revenue Commissioners of the invalid claim or overclaim, as the case may be, and

(II) repay to the Revenue Commissioners—

(A) in respect of an invalid claim, the amount paid in respect of that claim,

(B) in respect of an overclaim, the amount by which the amount paid in respect of that claim exceeds the amount the person is entitled to claim

(hereafter referred to in this section as the 'excess amount').

(b) Where a person makes a claim under this section in respect of a claim period and it subsequently transpires that the claim is an invalid claim or an overclaim, as the case may be—

(i) then, subject to subparagraph (ii), the amount of the advance credit for trading expenses paid by the Revenue Commissioners in respect of the invalid claim, or the amount of the advance credit for trading expenses overpaid by the Revenue Commissioners in respect of an overclaim, as the case may be, shall carry interest as determined in accordance with section 1080 (2) (c) as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, and

(ii) where the invalid claim or overclaim, as the case may be, was made neither deliberately nor carelessly (within the meaning of section 1077E) and the person complies with the requirements of paragraph (a)(II), the amount repaid to the Revenue Commissioners in respect of the invalid claim or overclaim, as the case may be, shall carry interest as determined in accordance with section 1080(2)(c)

as if a reference to the date when the tax became due and payable were a reference to the date paragraph (a) is complied with.

(c) Paragraph (b) shall apply to tax payable on unauthorised amounts under subsections (15) and (16) as it applies to overpayments arising on invalid or overclaims.

(18) (a) For the purposes of this subsection, 'claim' and 'overpayment' shall have the same meanings respectively as they have in subsection (1) of section 960H.

(b) In this subsection, a claim period is a 'reduced claim period' where—

(i) in the case of a claim period which is a Covid restrictions period, the claim period ends on a date as provided for (in relation to that Covid restrictions period) by paragraph (c) of the definition of 'Covid restrictions period end date' in subsection (1), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the date on which the applicable business restrictions provisions shall expire, and

(ii) in the case of a claim period which is a Covid restrictions extension period, the claim period ends on a date as provided for (in relation to that Covid restrictions extension period) by subsection (2) (b)(iii), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the date on which the applicable business restrictions provisions shall expire.

(c) Where a qualifying person makes an overclaim in respect of a reduced claim period, the Revenue Commissioners shall be entitled to recover the excess amount from the person in accordance with paragraph (d) where the following conditions are met:

(i) the claim is made before the end of the claim period; and

(ii) the claim is an overclaim solely by reason of the fact that the claim period is a reduced claim period.

(d) The Revenue Commissioners shall be entitled to recover the excess amount referred to in paragraph (c) by—

(i) setting the amount of an advance credit for trading expenses that the person is entitled to be paid in accordance with subsection (7) or (8) against the excess amount, or

(ii) where, after the end of the specified period, a repayment is due to the person in respect of a claim or overpayment, setting the amount of the repayment against the excess amount.

(e) Where the conditions referred to in paragraph (c) are met and the excess amount is recovered by the Revenue Commissioners in accordance with paragraph (d) within a reasonable period of time from the end of the specified period, the excess amount shall not be an unauthorised amount under subsection (15) or (16), as the case may be.

(f) Where the conditions referred to in paragraph (c) are met, the excess amount shall carry interest as determined in accordance with section 1080 (2) (c) as if the reference to the date when the tax became due and payable were a reference to the day after the day on which the specified period ends.

(19) Any claim made under this section shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E (11) or 1077E (12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to a claim in respect of a claim period made in connection with subsection (7).

(20) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—

(a) knowingly or wilfully delivers any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person, or

(b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return or statement, or knowingly or wilfully furnish any incorrect information in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person,
and

the provisions of subsections (3) to (10) of section 1078, and section 1079, shall, with any necessary modifications, apply for the purposes of this subsection as they apply for the purposes of offences in relation to tax within the meaning of section 1078.

(21) The administration of this section shall be under the care and management of the Revenue Commissioners and section 849 shall apply for this purpose with any necessary modifications as it applies in relation to tax within the meaning of that section.

(22) The Revenue Commissioners shall prepare and publish guidelines with respect to matters that are considered by them to be matters to which regard shall be had in determining whether—

(a) there are provisions of Covid restrictions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of a person is carried on in a Covid restrictions period, or Covid restrictions extension period, as the case may be, and

(b) as a result of the provisions referred to in paragraph (a), the turnover of the person in respect of the relevant business activity in the Covid restrictions period, or Covid restrictions extension period, as the case may be, will not exceed an amount that is 25 per cent (or less) of the relevant turnover amount.

(23) Notwithstanding any obligations imposed on the Revenue Commissioners under section 851A or any other enactment in relation to the confidentiality of taxpayer information (within the meaning of that section), the details referred to in clauses (I) and (III) of subsection (14) (a) (ii) shall, for all persons to whom an advance credit for trading expenses has been paid by the Revenue Commissioners under this section, be published on the website of the Revenue Commissioners.

(24) (a) Where a Revenue officer determines that a person is not a qualifying person within the meaning of subsection (4) (b), the Revenue officer shall notify the person in writing accordingly.

(b) A person aggrieved by a determination under paragraph (a), may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date on the notice of the determination.

(c) Where the Appeal Commissioners determine that a person is a qualifying person within the meaning of subsection (4)(b), the 8 week period specified in subsection

(9), shall commence in respect of such a person on the date that determination is issued.

(d) The reference to the Tax Acts in paragraph (a) of the definition of 'Acts' in section 949A shall be read as including a reference to this section.