



159TACD2023

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is a consolidated appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of the [REDACTED] [REDACTED] (“the Appellant”) against Notice of Estimation dated 16 December 2021 and Notice of Estimation and Notices of Assessment dated 6 December 2022, issued by the Revenue Commissioners (“the Respondent”), in relation to the years 2016 to 2019 inclusive. The liabilities at issue are in the total sum of **€297,738**.
2. The liabilities arose in circumstances where the Respondent disallowed certain travel expenses on the basis that the Appellant did not keep adequate records and that the expenses alleged to have been incurred by certain Directors of the Appellant and a spouse of the Appellant were not incurred in travelling “*in the performance of the duties of that office or employment*”, in accordance with **section 114 TCA 1997**.
3. On 23 December 2021 and 30 December 2022, the Appellant duly appealed the Notices of Estimation and Notices of Amended Assessment to the Commission. The appeal proceeded by way of a hearing on 14 August 2023. Both the Appellant and the Respondent were represented by Junior Counsel. In addition to submissions, the Commissioner heard sworn oral evidence from the CEO and Director of the Appellant, [REDACTED] (“CEO of the Appellant”), the Director, Chief Financial Officer (“CFO”) and Product Manager of the Appellant, [REDACTED] (“CFO of the Appellant”) and [REDACTED] a customer of the Appellant, who joined the hearing remotely to give evidence.
4. The Appellant has withdrawn its claim for research and development (“R&D”) credits and the Respondent has confirmed the position. Therefore, the appeal of assessments relating to Corporation Tax is withdrawn and this appeal relates only to the question of the correct assessment of PAYE, USC and PRSI. This was confirmed by email to the Commission dated 6 September 2023, from the Appellant’s representative stating that “*Based on a Settlement Agreement signed by our client and the Revenue Commissioners, on behalf of our client we now formally withdraw the appeal as it relates to corporation tax for the Years Ended 31 January 2017, 31 January 2018, 31 January 2019 and 31 January 2020*”. By email dated 14 September 2023 from the Respondent, that position was confirmed. The Respondent stated that “*We write to confirm that the hearing of 14 August 2023 concerned the PREM Appeal only and that both parties were aware before the hearing that the Corporation Tax element of the Appeal was being withdrawn. The Commissioner was also informed of this at the said hearing of the PREM Appeal. Please note that, as per the*

Appellant's Agent's email of the 6 September 2023, we further confirm that the Corporation Tax element is withdrawn".

Background

5. The Appellant [REDACTED]. The Appellant was originally incorporated in [REDACTED]. The Appellant's headquarters are in [REDACTED] Co Dublin. The Appellant's competitors are [REDACTED].
6. The Appellant has dual customers, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7. The Appellant submits that it generates its business via direct visits to [REDACTED] customers, which requires the Appellant's directors and certain employees to undertake a large amount of travelling to multiple locations.
8. On 13 November 2020, the Appellant made a voluntary disclosure which, following further correspondence between the parties, resulted in the notification of an audit on 26 April 2021. The Appellant made a second voluntary disclosure on 6 July 2021. The Respondent considered the voluntary disclosures to be incomplete.
9. By Notices of Estimation of Amounts due dated **16 December 2021**, the Appellant was assessed to additional PAYE, USC and PRSI for **2016** in the amount of **€236,872.73**.
10. By a further Notice of Estimation of Amounts due dated **6 December 2022**, the Appellant was assessed to additional PAYE, USC and PRSI for **2017 and 2018**, in the sum of **€146,296.78**.
11. For the year **2019**, the Appellant was assessed under the amended PAYE system for a total of **€431,322.30**, which includes an additional amount of €85,770.
12. The cumulative additional assessments for the years 2016 – 2019 inclusive are set out in the Respondent's Outline of Argument as follows:

Year	Additional Amount
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2016	€236,872.73
2017	€69,049
2018	€76,781
2019	€85,770

13. Following the raising of the additional assessments for the above amounts and following further submissions by the Appellant, relating to the year 2016, the Respondent accepts that the reduced additional amount due for the year 2016 is in the sum of €66,138. Therefore, the amended cumulative PAYE/PRSI/USC assessments for the years **2016 to 2019** are in the sum of **€297,738**, as set out in correspondence dated 9 November 2022 from the Respondent to the Appellant.
14. By Notices of Amended Assessment on 14 December 2021 and 8 December 2022, the Appellant was assessed to additional corporation tax as a result of the withdrawal by the Respondent of **(R&D) credits** claimed by the Appellant for the accounting periods ending on 31 January 2017, 31 January 2018, 31 January 2019, 31 January 2020.
15. On 28 February 2023, the Appellant confirmed that the parties had agreed that the corporation tax assessments could be amended to reflect the withdrawal of the R&D credits claimed. Therefore, the Appellant's R&D appeal has been resolved and the matter at issue herein, is whether or not the Appellant ought to have remitted PAYE, PRSI and USC on payments made to the Appellant's CEO, the Appellant's CFO and a spouse in respect of travel expenses claimed.

Legislation and Guidelines

16. The legislation relevant to this appeal is as follows:-
17. Section 112 of the Taxes Consolidation Act 1997, Basis of assessment, persons chargeable and extent of charge, provides:-

(1) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever

therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

(2) In this subsection, "emoluments" means anything assessable to income tax under Schedule E.

18. Section 114 of the Taxes Consolidation Act 1997, General rule as to deductions, provides:-

Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

19. Section 117 of the Taxes Consolidation Act 1997, Expenses allowances, provides:-

(1) Subject to this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of section 112 as a perquisite of the office or employment of that director or employee and included in the emoluments of that office or employment assessable to income tax accordingly; but nothing in this subsection shall prevent a claim for a deduction being made under section 114 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment.

(2) The reference in subsection (1) to any sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him or her.

20. Section 118(1) of the Taxes Consolidation Act 1997, Benefits in kind: general charging provision, provides:-

(a) Subject to this Chapter, where a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of-

- (i) living or other accommodation,*
- (ii) entertainment,*
- (iii) domestic or other services, or*
- (iv) (other benefits or facilities of whatever nature, and*

(b) apart from this section the expense would not be chargeable to income tax as income of the director or employee then, sections 112, 114 and 897 shall apply in relation to so much of the expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount of the expense had been refunded to the director or employee by the body corporate by means of a payment in respect of expenses, and income tax shall be chargeable accordingly.

21. Section 886 TCA 1997, Obligation to keep certain records, *inter alia* provides:-

(2) (a) Every person who –

(i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,

(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains, shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

Evidence and Submissions

Appellant's Evidence

22. The Appellant's CEO gave evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by the Appellant's CEO:-

- 22.1. The witness confirmed that he is a majority shareholder in the Appellant and company director. The witness stated that his role in the Appellant is sales and marketing, because that is where his personal experience lies. The witness stated that he is responsible for generating business, market awareness, brand awareness, and sales leads for the Appellant. The witness said that he is the relationship builder for the Appellant.
- 22.2. The witness testified that his spouse is an employee of the Appellant and any new advertising and marketing campaigns that are run by the Appellant, would be devised in conjunction with the witness's spouse. The witness stated that the Appellant has 20 employees, with five employees working in sales, including a sales manager.
- 22.3. The witness stated that when he took over the Appellant in 2001, the majority of the business was in the [REDACTED] region, [REDACTED]. The witness gave evidence that an awful lot of travel was undertaken to [REDACTED], trying to win business on a regular basis. The witness testified that as a result, the Appellant achieves over 50% of its recommendations from [REDACTED], because they know that when the [REDACTED] is purchased it will work, that the support team will look after their clients and that if their clients have any questions, they can contact the Appellant.
- 22.4. The witness testified that the Appellant has dual customers, [REDACTED]. The witness stated that the Appellant sells to the butcher, the baker, the candlestick maker, but that the Appellant would also sell to [REDACTED].
- 22.5. The witness testified that the Appellant regularly arranges seminars around the country and on the back of those seminars, the witness would also utilise his time, calling out to customers [REDACTED], dropping in promotional material to them, in order that the Appellant is first and foremost in their minds when small businesses set up a business [REDACTED]. The witness stated that this approach came from his training earlier in his career where "territory management" was very important and where he utilised every trip to make sure he got the most out of it. The witness testified that it is very informal in the country, unlike Dublin, such that the Appellant is not required to have prearranged meetings with businesses.

- 22.6. The witness stated that he was under the impression that, as directors of the Appellant, it was not necessary to keep actual receipts relating to travel expenses. Therefore, records were kept in notebooks as he travelled or sheets of paper and then he would upload the information to an expense sheet, putting in the date, the distance, the client and the rate. The witness gave evidence that he did not think it was necessary to keep the notes once the information was added to the expense sheet. In relation to the corruption of the expense sheet, the witness stated that it was just an inadvertent mistake, a genuine error on the Appellant's behalf, as the Appellant had its whole network backed up.
- 22.7. The witness confirmed that the process now for maintaining records is that expenses must be receipted and vouched expenses. In addition, expenses are recorded in an expense sheets which is backed up.
- 22.8. Reference was made to the Appellant's Index of Documentation at pages 1 and 2 and certain emails from the witness to the Appellant's financial controller in relation to expenses. Reference was made to page 9 of the Appellant's Index of Documentation. The witness explained that this is a printout of the corrupted expense sheet that contained expenses as recorded during the years in question. However, some of the trips got misaligned and doubled up, such that if he was in one location, it might have said that he was in the same location at the same time, which was impossible. The witness said that it is admitted that there are mistakes in relation to these records, but inadvertently. The witness testified that it is not the case that the travel was not undertaken.
- 22.9. On cross examination by Counsel for the Respondent, it was put to the witness that in September 2020, the Appellant made a disclosure to the Respondent and part of that disclosure was in relation to excess directors travel expenses. The witness agreed and reference was made to page 135 of the Respondent's Book of Documentary Evidence, the expense sheets referred to in examination in chief. The witness confirmed that these were the expense sheets submitted in relation to his expenses, the expenses of the Appellant's CFO and the expenses of his spouse and are travel and subsistence expenses that the Appellant disclosed to the Respondent. The witness confirmed that the Appellant's sales manager claimed travel expenses in the sum of €482. In addition, the witness confirmed that in relation to his own expenses, claims were made in the sum of €2,598 in January 2016 to €2,679 by the end of 2016, with a total of €32,717 being claimed for 2016. The witness stated that he generates the business for the sales team

to close. The witness said that the Appellant used civil service rates in terms of the travel claims, but that he did not know the amount as that was a matter for the Appellant's CFO and in any event, the rate was embedded in the expense sheet and all he had to do was add the mileage.

22.10. It was put to the witness that vouching documentation was submitted on behalf of all individuals, with the exception of the witness, the Appellant's CFO and his spouse. The witness confirmed that was the situation and stated that the employees were required to submit receipts that were signed off by the department head. It was put to the witness that all parties accept that there has been excessive claims in relation to travel expenses, but that in addition to that, the Respondent does not accept the revised amounts, as the Respondent does not accept that any of the journeys were made during the relevant years.

22.11. A number of discrepancies were put to the witness in relation to the travel as set out in the expense sheets at Tab D2 of the Respondent's Book of Documentary Evidence and the witness was provided with an opportunity to respond to the discrepancies. The witness stated that the mileage reflects the distance from [REDACTED] to the exact location and back again, but that he would have visited a number of other customers on the way and would not have put them all into the expense sheet. The witness said that the process was to put one person into the expense sheet in the county that he would have visited at the time.

22.12. Reference was made to Tab 11, page 286 of the Respondent's Book of Documentary Evidence, an invoice from the [REDACTED] USA. It was put to the witness that he was in the USA and not travelling in Ireland on the relevant date. The witness stated that it has been admitted that there has been mistakes and errors in some of the records and this was clearly one of them. The witness confirmed that subsequent to the Respondent identifying the records indicating that the witness was in two different places at the same time, he did not check to see if the records were correct and that he has not attempted to calculate which records are correct and/or incorrect. The witness testified that they were "at the end of our tether" in terms of the information requested by the Respondent, so he went to the Appellant's customers and asked them to confirm that the witness was in their premises on certain dates.

22.13. Several further inconsistencies were identified to the witness in relation to international travel and he was cross examined on same. The witness stated that he accepts that mistakes were made and some of the dates were incorrect, but

that he is not accepting that the mileage was not done. A number of seminars held throughout the years at issue were also put to the witness in relation to inconsistencies, such as an overnight stay in the ██████████ in Killarney on the ██████████ 2017, but a claim was made for travel to Tralee and back from Dublin. The witness agreed that this is incorrect.

- 22.14. It was put to the witness that there exists no records of meetings, such as internal records of emails confirming a visit or thanking a customer for a visit and that this is normally something that exists. The witness stated that it is more relaxed in the country and that he might call to a customer unannounced or someone in the office might speak to him personally, or on the phone, about calling into a customer.
- 22.15. The witness was asked why the mileage is increasing as the year went on and the witness confirmed that the Appellant has busy times of the year. In relation to customers in Dublin, the witness stated that he would have visited them on the way to a customer outside of Dublin.
23. The Appellant's CFO gave evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by the Appellant's CFO:-
- 23.1. The witness confirmed that he is a Director of the Appellant, the CFO and product manager, responsible for the product and development side of the business. The witness stated that he is responsible for managing the product team, ensuring that they deliver the applications and ██████████ suitable to the customer's needs. In addition, he keeps up-to-date with any statutory changes, as well as developing new modules. The witness confirmed that there is a part time finance manager and bookkeeper also.
- 23.2. The witness testified that he interacts with customers and would have done a lot of customer visits as well. In addition, part of his role visiting customers would have been to gather product feedback, understanding what their challenges were, understanding what existing features needed additional updates, and looking for new product ideas from them. He stated that he is responsible for all aspects of the product development life cycle, from inception of the idea through to product development testing and then the rollout to customers.
- 23.3. The witness stated that the Appellant has two business analysts and a developer who is primarily a payroll developer based in Ireland. In addition, there is telephone support, such that routine support is handled by the team. The witness

stated that if matters are escalated to him he would have quite a lot of interaction with customers on the site. The witness gave evidence that the other part of this role is delivering seminars. He said that he has always presented at seminars and that he would have called into customers [REDACTED] around those times as well.

- 23.4. The witness confirmed that his travel is recorded on a spreadsheet on his computer. The witness said that on a monthly basis he would collate expenses and give it to the financial controller in terms of the amounts that were on those sheets. He confirmed he created the expense sheet and that civil services rates were used.
- 23.5. The witness was cross examined by Counsel for the Respondent. The witness testified that in advance of the voluntary disclosure, he realised that he had been using incorrect rates which were embedded in the expense sheet. The reason for the cumulative column, was so that it would clearly indicate when the mileage rates changed, to make sure that the same rate was applied. The witness said that on the original expense sheet, there was a formula that was quite complex to calculate and that it was one of the errors in the original expense sheet.
- 23.6. The witness confirmed that he had no record of any of the travel undertaken, except for what was in the expense sheet. The witness confirmed that the directors and the spouse of the CEO kept different records to the employees in that they did not retain receipts for travel undertaken. The witness said that it is admitted that inconsistencies occurred when the expense sheets were updated, but that the travel did actually happen. It was put to the witness that the records are clearly unreliable.
- 23.7. It was put to the witness that there are no claims in the expense sheets for the seminars which he attended. The witness stated that a decision was made to claim for customer visits to locations and not seminars, as this would have been a double claim had the seminars been included. Further, it was put to the witness that this is not entirely accurate, as you cannot claim you visited a customer during a seminar, when you stayed overnight at the seminar and all claims in the expense sheet relate to visits from the Appellant's headquarters in [REDACTED] Dublin and back to the headquarters in [REDACTED] Dublin. In relation to the expense sheets, the witness testified that the data was corrupted, the dates got confused and he does not have the original documents.

- 23.8. It was put to the witness that in relation to the claim for the R&D credits, he stated that he spent 90% of his time working on 11 projects that related to R&D. In that regard, reference was made to the Respondent's Book of Documentary Evidence at page 309. The witness stated that an incorrect assumption is made that a week is 9 to 5 Monday to Friday. The witness stated that his working week is day and night and that he also works at weekends. He stated that for example, the team in [REDACTED] are six hours ahead, so he would work with them outside those hours as well. In addition, the witness testified that when he is in his car he always makes use of his time, speaking to the team and when he is out visiting customers it is to get feedback on products.
- 23.9. The witness was asked to explain why the amount of travel and subsistence is regular across the year, despite the fact that the mileage rate drops very quickly after three months of the year. The witness stated that he could not answer that question. The witness stated that the Appellant has held its hands up in terms of the recordkeeping, but there is no doubt that in order to drive a successful and profitable business, the Appellant needs to travel to customers [REDACTED].
- 23.10. The witness was asked why the claims of the Appellant's employees are far smaller than either of the two directors. The witness stated that this is due to the fact that they are primarily office based.
24. [REDACTED] gave evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by [REDACTED]
- 24.1. The witness confirmed that she is a [REDACTED], for over 35 years. The witness stated that she knows the Appellant from using its [REDACTED]. The witness testified that the Appellant is one of the most proactive companies for developing [REDACTED] and that the Appellant holds workshops that she would have attended.
- 24.2. The witness testified that the CEO of the Appellant would give a welcome talk at the seminars and then the Appellant's CFO would take over. The witness confirmed that she had provided a letter dated 20 July 2023, signed by her to the Commission in relation to this appeal. The witness stated that she confirmed that she met the Appellant's CEO and the Appellant's CFO at these workshops. The witness said that aside from the seminars, she had some engagement with the Appellant's directors, who came to her office some months after a seminar.

24.3. The witness was cross examined by Counsel for the Respondent and she confirmed that the Appellant's technology support is excellent, such that if it is contacted by phone with a technical issue, it is usually resolved there and then over the phone.

Appellant's Submissions

25. Counsel made submissions on behalf of the Appellant. The Commissioner sets out hereunder a summary of the submissions made:-

25.1. The Appellant operates a territory management system, whereby when an officer is in a given town or county for a seminar or customer visit, they will proceed to make ad hoc visits to [REDACTED] businesses, developing relationships, providing promotional material and so on to prospective and current customers in the area. The officers spent two, three or even four days of the week on the road during the years in question. Therefore, it is clear that in the circumstances of the trade and the role provided by these officers, that these expenses were incurred and were wholly, necessarily and exclusively laid out for the purposes of the trade. Reference was made to section 81 TCA 1997.

25.2. The Appellant did maintain a record of these expenses. The Appellant's CFO maintained on his work computer, a spreadsheet of the trips undertaken by the officers in question, which included the date, the customer, the address and the kilometres achieved. This spreadsheet was kept separate from the other employees' expenses system. The mileage would be e-mailed to the financial controller and it would be reimbursed through payroll on a monthly basis. This was the process and recordkeeping that was in place at the time

25.3. However, in preparing for engagement with the Respondent, it was realised that the incorrect rate had been applied. The rate was embedded into the spreadsheet and when it was corrected to the correct civil service approved rates, the spreadsheet was inadvertently corrupted and the original data was overridden. This was the only record and no backup was taken.

25.4. Following the audit by the Respondent, the Respondent found that there were significant inaccuracies and that the records were not vouched. The Appellant submits the records in evidence, not as an accurate reflection of the records that were kept, rather as demonstrating that records were, indeed, maintained, as required by statute. Therefore, any inconsistencies or contradictions are a result of that corruption and overwriting of data.

- 25.5. The Appellant accepts that it was under a mistaken impression that directors did not have to maintain vouched records of expenses and it accepts that the incorrect rate was applied to the spreadsheets during the years in question. The Appellant has been able to produce a number of supporting records, including printouts from their events, contemporaneous tweets, and photographs. These demonstrate that the Appellant and, in particular, the officers and employee in question, engaged in extensive travel during the years in question.
- 25.6. The Appellant has also engaged with their customers, who have provided letters confirming general and specific events and specific visits. A customer gave evidence via video link of her experience of this visit.
- 25.7. As to the deductibility of expenses, under Cases I and II of Schedule D, no deduction is allowable except as provided for by law and where it is provided and it is provided in the negative that disbursements which are wholly and exclusively laid out for the purposes of a trade are allowable. Reference was made to section 81 TCA 1997.
- 25.8. Under Schedule E, income tax is to be levied on all salaries, fees, wages, perquisites and profits of an office of employment (section 112 TCA 1997), but where an officer or an employee is required to spend their own money on travelling on behalf of their employer, these expenses can be reimbursed tax free. Reference was made to section 114 TCA 1997.
- 25.9. Reference was made to section 886 TCA 1997, which provides an obligation for a chargeable, taxable person to keep records enabling it to make its returns. The Appellant did maintain records when the repayments and the returns were made.

Respondent's Submissions

26. Counsel made submissions on behalf of the Respondent. The Commissioner sets out hereunder a summary of the submissions made:-

- 26.1. The Appellant has not demonstrated that it was entitled to deduct the "expenses of travelling in the performance of the duties of that office or employment" in accordance with section 114 TCA 1997. The Appellant has not provided any supporting documentation to demonstrate that the expenses it says were incurred were in fact incurred.
- 26.2. The Appellant's initial R&D appeal has been resolved and the only issue is whether or not the Appellant ought to have remitted PAYE, PRSI and USC on

payments made to two of its directors and one of their spouses in respect of mileage claims made.

- 26.3. Reference was made to sections 112, 114 and 117 TCA 1997. Where the expenses paid by a company to a director or employee are shown to be expenses of travelling in the performance of the duties of that office a claim for a deduction can be made.
- 26.4. The reimbursement of expenses incurred by officeholders or employees which are wholly and exclusively incurred in the performance of their duties or the reimbursement expenses of travelling in the performance of the duties of that office do not incur an income tax liability.
- 26.5. It is for the Appellant to satisfy the Commissioner that the payments it made to the Appellant's CEO, the Appellant's CFO and a spouse come within the scope of section 114 TCA 1997, so that it did not have to deduct PAYE, PRSI or USC from the payments it made. The Appellant must establish that the expenses incurred were "expenses of travelling in the performance of the duties of that office". It is the Respondent's position that the Appellant has not discharged the onus of proof required to come within the application of section 114 TCA 1997.
- 26.6. The Appellant is required to maintain books and records in accordance with section 886 TCA 1997. The only evidence the Appellant appears to hold in relation to these expenses is an excel expense sheet.
- 26.7. One would expect such evidence to show the date and reason for each business trip undertaken, the kilometres travelled, the starting point and destination and the basis for the reimbursement. The Appellant has only provided a spreadsheet to date. Aside from receipts and other linking documents for expenses incurred, one would also expect to see other ancillary records such as emails, which would show the planning of the business trip undertaken. The Appellant has failed to provide any linking documentation in support of its contention that the payments were made in respect of "expenses of travelling in the performance of the duties of that office".
- 26.8. The Appellant has not provided any evidence that the expenses paid to the Appellant's CEO, the Appellant's CFO and a spouse were the reimbursement of expenses of travelling and subsistence in the performance of the duties of that office. In the absence of such evidence, the payments are emoluments in respect of which the Appellant ought to have deducted PAYE, PRSI and USC.

Material Facts

27. Having read the documentation submitted, and having listened to the sworn oral evidence and oral submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

27.1. The Appellant is a limited company.

27.2. The Appellant designs and sells [REDACTED].

27.3. The Appellant was originally incorporated in [REDACTED]
[REDACTED]

27.4. The Appellant's headquarters are in [REDACTED] Co Dublin.

27.5. The Appellant has dual customers, [REDACTED].

27.6. On 13 November 2020, the Appellant made a voluntary disclosure which, following further correspondence between the parties, resulted in the notification of an audit on 26 April 2021. The Appellant made a second disclosure on 6 July 2021.

27.7. By notices of estimation of amounts due dated 16 December 2021, the Appellant was assessed to additional PAYE, USC and PRSI for 2016 in the amount of €236,872.73. By further notice of estimation of amounts due dated 6 December 2022, the Appellant was assessed to additional PAYE, USC and PRSI for 2017 and 2018 in the sum of €146,296.78.

27.8. The amended cumulative assessments for the years **2016 to 2019** are in the sum of **€297,738**.

27.9. The Appellant has not provided any vouching or supporting documentation to demonstrate that the travel expenses, it states were incurred in relation to travel in this jurisdiction, were in fact incurred.

27.10. The Appellant has not produced any internal records, such as email correspondence between employees and customers in relation to visits undertaken by the Appellant's CEO, the Appellant's CFO and a spouse.

27.11. Aside from one customer's evidence as set out above, the Appellant did not proffer any other evidence in relation to the documents submitted in the form of letters from customers included in the Appellant's Index of Supplemental Documentation.

27.12. The records in the expense sheets of the travel undertaken by the Appellant's CEO, the Appellant's CFO and the spouse of the Appellant's CFO are inconsistent and unreliable.

27.13. The records of the foreign travel undertaken by the Appellant's CEO, conflicts with the records of travel undertaken by him in this jurisdiction.

27.14. The Appellant has withdrawn its claim for R&D credits and the Respondent confirmed same.

Analysis

28. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another ("Menolly Homes")* [2010] IEHC 49, wherein at paragraph 22, Charleton J. states that:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".

29. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgement of Charlton J. in *Menolly Homes*, wherein he states that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

30. The central issue to be determined is whether or not the Appellant ought to have remitted PAYE, PRSI and USC on payments made to the Appellant's CEO, the Appellant's CFO and a spouse, in respect of travel expenses claimed. In this regard, the Commissioner will consider section 81 TCA 1997, in addition to sections 112, 114 and 117 TCA 1997. Further, the Respondent asserts that the Appellant has failed to maintain records in accordance with its statutory obligations and the Commissioner considers that section 886 TCA 1997 is relevant to consider in that regard.

31. The Commissioner notes that on 13 November 2020, the Appellant made a voluntary disclosure to the Respondent, with a second voluntary disclosure being made on 6 July 2021. Both disclosures related to travel expenses claimed by the Appellant's CEO, the

Appellant's CFO and a spouse. Consequent the voluntary disclosure being made by the Appellant in 2020, on 26 April 2021, the Respondent notified the Appellant of an audit of its books and records. The Commissioner has considered the correspondence submitted in the Respondent's Book of Documentary Evidence relating to the audit of the Appellant's books and records.

32. Following an audit of the Appellant's books and records, the Respondent raised a Notice of Estimation dated 16 December 2021 and a Notice of Estimation and Notices of Assessment dated 6 December 2022, in relation to the years 2016 to 2019 inclusive.
33. The Commissioner further notes that the Appellant has withdrawn its claim for R&D credits and the Respondent confirmed same. The Commissioner notes that the appeal of the part of the Assessments relating to Corporation Tax is withdrawn. Therefore, the Commissioner makes no determination in relation to this matter and this appeal relates only to the question of the correct assessment of PAYE, USC and PRSI. This was confirmed by an email to the Commission dated 6 September from the Appellant's representative stating that *"Based on a Settlement Agreement signed by our client and the Revenue Commissioners, on behalf of our client we now formally withdraw the appeal as it relates to corporation tax for the Years Ended 31 January 2017, 31 January 2018, 31 January 2019 and 31 January 2020"*. By email dated 14 September 2023, from the Respondent, that position was confirmed. The Respondent stated that *"We write to confirm that the hearing of 14 August 2023 concerned the PREM Appeal only and that both parties were aware before the hearing that the Corporation Tax element of the Appeal was being withdrawn. The Commissioner was also informed of this at the said hearing of the PREM Appeal. Please note that, as per the Appellant's Agent's email of the 6 September 2023, we further confirm that the Corporation Tax element is withdrawn"*.
34. The Commissioner notes that the Appellant rejects the Notices of Estimation and Notices of Assessment in full and contends that they are excessive. The Appellant argues that legitimate travel costs were incurred by the Appellant's CEO, the Appellant's CFO and a spouse, for the purposes of its business. Moreover, it is submitted that the Appellant maintained records of these expenses during the years in which the claims were made, but that corruption of the data in the expense sheets occurred during engagement with the Respondent.
35. The Respondent states that the Appellant has not provided any evidence that the travel expenses paid to the Appellant's CEO, the Appellant's CFO and a spouse were the reimbursement of travel expenses in the performance of the duties of that office. The

Respondent submits that in the absence of such evidence, the payments are emoluments in respect of which the Appellant ought to have deducted PAYE, PRSI and USC.

Section 114 TCA 1997

36. Section 81(2) TCA 1997 is only prescriptive in respect of “computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D” and it is silent on any PAYE tax consequences that might arise on expenses that are deemed to be non-deductible under this section.
37. The relevant potential charge to PAYE, PRSI and USC for the travel and subsistence expenses in this appeal, arises pursuant to sections 112, 114 and 117 TCA 1997. It is for the Appellant to show that the payments it made to the Appellant’s CEO, the Appellant’s CFO and a spouse come within the scope of section 114 TCA 1997, so that it did not have to deduct PAYE, PRSI or USC from the payments it made. The Appellant must establish that the expenses incurred were “expenses of travelling in the performance of the duties of that office”.
38. The deeming provisions contained in section 117 TCA 1997 treat the payment of expenses by a body corporate to any of its directors or employees as a perquisite for the purposes of section 112 TCA 1997, notwithstanding that no personal benefit may have been derived.
39. The general rule as provided for in section 114 of the TCA 1997 is longstanding, being in all material respects identical to that prescribed in the Income Tax Act 1918 and, before that, the Income Tax Act 1853. In *Ricketts v Colquhoun*, Viscount Cave L.C., at page 4, made the following observations in respect of travel expenses:-

“..they must be expenses which the holder of an office is necessarily obliged to incur - that is to say, obliged by the very fact that he holds the office and has to perform its duties - and they must be incurred in - that is, in the course of - the performance of those duties.

The expenses in question in this case do not appear to me to satisfy either test. They are incurred not because the appellant holds the office of Recorder of Portsmouth, but because, living and practising away from Portsmouth, he must travel to that place before he can begin to perform his duties as Recorder and, having concluded those duties, desires to return home. They are incurred, not in the course of performing his duties, but partly before he enters upon them, and partly after he has fulfilled them”.

40. Further, Viscount Cave, L.C. in disallowing subsistence payments, observed at page 134 as follows:-

“A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work, so that he must find board and lodging away from home, that is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance.”

41. In the case of *SP Ó Broin v Mac Giolla Meidhre*, Teevan J. quoted the following words of Lord Blanesburgh in relation to the operation of the general rule in *Ricketts v Colquhoun* as follows:-

“it says ‘if the holder of an office’ – the words be it observed are not ‘if any holder of an office’ – ‘is obliged to incur expenses in the performance of the duties of the office’ – the duties again are not the duties of his office. In other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective. The deductible expenses do not extend to those which the holder has to incur mainly, and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition”.

42. As is clear from the passage in *Ricketts v Colquhoun* quoted above, it is a strict requirement for the allowance of a deduction under section 114 of the TCA 1997, that there be an objective obligation arising from a duty that necessitates a taxpayer to incur an expense. This rules out expenses that arise from decisions that are “*personal*” to a taxpayer.

43. This interpretation is endorsed in subsequent jurisprudence opened by the Respondent. To this extent and as noted by Vinelott J. in *Elderkin v Hindmarsh* [1988] STC 267 at page 270, the UK equivalent of section 114 of the TCA, is so stringent “*that in many, if not in most, cases the subsection gives the taxpayer little or no relief*”.

44. In addition, the Commissioner notes that the Appellant relies on decision of a former Appeal Commissioner in 32TACD2021, which the Commissioner has considered in the course of this appeal.

45. In order to succeed, therefore, the Appellant must show that the expenses in question, incurred by the Appellant’s CEO, the Appellant’s CFO and a spouse, were incurred in the performance of their duties, that they were incurred of necessity in the performance of their duties and that they were incurred wholly and exclusively in the performance of their duties (in their entirety, and excluding any ancillary or personal purpose).

46. The Commissioner observes that the Appellant has been permitted the payment of certain travel and subsistence claims made by other employees, without any deduction of tax, where those claims have been supported by linking documents, such as receipts, or other ancillary documentation, such as emails arranging trips. As per the evidence given in this appeal, no such linking documents have been provided in respect of the expense claims made by the Appellant's CEO, the Appellant's CFO and a spouse.
47. The Commissioner notes that the Appellant argues that it is clear that the officers and employee in question, who were at all times based in Dublin, were necessarily required to incur travel expenses in the performance of their duties, which involved visiting customers and prospective customers with a view to generating new business, organising seminars relating to the [REDACTED] and attendance at trade shows. This allowed the Appellant to maintain relationships with its customers in a highly competitive international market. Therefore, it is submitted that the Appellant's reimbursement of its officers' and employee's travel expenses was legitimately made.
48. However, the Commissioner does not consider that the evidence adduced supports such an argument. The Commissioner has considered the expense sheets at page 8 onwards of the Appellant's Index of Documentation containing certain information in relation to the date and customer for each business trip undertaken and the kilometres travelled. The Commissioner is satisfied that the evidence suggests that following an audit of the Appellant's books and records by the Respondent, the Respondent found that there were significant inaccuracies in the expense sheets and that the travel undertaken, as set out in the expense sheets, was not vouched. As per the evidence adduced, for example the expense sheet reflects at page 209 of the Respondent's Book of Documentary Evidence that on Monday [REDACTED] 2018, the Appellant's CEO travelled from the Appellant's headquarters in Dublin to Limerick and back to Dublin. However, there exists a record at page 293 of the Respondent's Book of Documentary Evidence that the Appellant's CEO was at an [REDACTED] in [REDACTED], Austria on that date. The record relating to this travel was provided to the Respondent during the audit. It was the Respondent who discovered the inaccuracy in the expense sheets. The Appellant's CEO gave evidence that he attended the meeting in Austria on that date. The Commissioner therefore can conclude that the record relating to the travel to Limerick and back to Dublin is incorrect.
49. The Commissioner notes that it is submitted that the Appellant presents the records in evidence, not as an accurate reflection of the records that were kept, rather as demonstrating that records were, indeed, maintained, as required by statute. Therefore, any inconsistencies or contradictions are a result of that corruption and overwriting of data.

The evidence of the Appellant's CEO and CFO is that dates of travel undertaken were moved within the expense sheets, but the travel was undertaken and should therefore be allowed.

50. The Commissioner did not find the testimony of the Appellant's CEO or the Appellant's CFO to be persuasive in terms of the inaccuracies and is satisfied that no effort was made by the Appellant's CEO or the Appellant's CFO to illustrate which record can be relied on and what is inaccurate in the expense sheets. On cross examination of the Appellant's CEO and the Appellant's CFO, it became clear to the Commissioner that when the Appellant's CEO or the Appellant's CFO were questioned in relation to trips taken for foreign travel and seminars, there were a number of inaccuracies in relation to the locations of the travel undertaken on certain dates which was reflected in the expense sheets. The Commissioner notes that submitted on behalf of the Appellant are letters from the Appellant's customers contained in the Appellant's Index of Supplemental Documentation. However, with the exception of [REDACTED], in circumstances where no customers gave evidence at the hearing of the appeal to the Commissioner, the Commissioner attaches little weight to the evidential value of these purported letters from customers. Moreover, the Commissioner heard evidence from [REDACTED], yet her evidence does not establish the inaccuracies in the expense sheets that were identified. The witness testified only of a visit and attending seminars.
51. In addition, the Commissioner notes that it is accepted that on certain dates when seminars were taking place, wherein the Appellant's CEO or the Appellant's CFO stayed overnight in certain locations, that travel to and from the Appellant's headquarters in [REDACTED] Dublin could not have taken place on that date. Yet this is what is reflected in the expense sheets. In particular, the Appellant's CEO was questioned in relation to a medical appointment in Dublin on a certain date, where in accordance with the spreadsheet he was in another county visiting a customer. The witness stated that he could not remember having attended the medical appointment. The Commissioner notes the documentation contained in the Appellant's Supplemental Index of Documentation relating to seminars and site visits. In addition the Commissioner notes the evidence that claims for travel expenses were not made on the basis of seminars, but on the locations and that it was only when the data in the expense sheets corrupted, that the Appellant felt it necessary to piece together documentation relating to its seminars.
52. The Commissioner notes that each and every time an inaccuracy was addressed by Counsel for the Respondent with the Appellant's CEO or the Appellant's CFO, the witnesses resorted to repeating their testimony that the expense sheets were corrupted and no copy was retained or backed up in the cloud, therefore this is the only record that

exists i.e. the corrupted copy. Further, it was repeated by the witnesses *“that inconsistencies occurred when the spreadsheets were updated, but that the travel actually did happen”*.

53. The Commissioner considers that the records are wholly unreliable in terms of the travel claims made and that the evidence of the witnesses were not persuasive in terms of the corruption of the data being the reason for the considerable number of inconsistencies. The Commissioner notes that the evidence is that the expense sheets were corrupted following an error being corrected in the civil service rate being claimed for travel undertaken. When the Appellant’s CFO attempted to change the rate, the expense sheets corrupted and no copy was held. In relation to the corruption of the spreadsheet, the witness stated that *“it was just an inadvertent mistake, a genuine error on the Appellant’s behalf, as the Appellant had the whole network backed up”*. Again, the Commissioner does not find it credible that a [REDACTED] company, the business of which is the provision of [REDACTED] [REDACTED] held no other soft copy whatsoever of these records for each person.

54. Moreover, the testimony of the Appellant’s CEO and the Appellant’s CFO was that the employees of the Appellant were required to submit vouched expenses for travel undertaken. The Commissioner notes the evidence of the Appellant’s CEO that whilst this was required for employees, such vouched travel was not required and not necessary for the Appellant’s CEO, the Appellant’s CFO and a spouse. The Appellant has failed to provide any linking documentation in support of its contention that the payments were made in respect of *“expenses of travelling in the performance of the duties of that office”*. Again, the Commissioner does not find it credible that the Appellant, the business of which is the provision of [REDACTED] for small business, held no vouching documentation. The Commissioner notes that even the Appellant’s CFO held no vouching documentation, yet required it of other employees in order that expense claims could be processed by the finance team. The Commissioner does not consider this to be a credible explanation for the lack of records held for the Appellant’s CEO or the Appellant’s CFO or a spouse.

55. In addition, the Commissioner notes that there exists no internal records to support the travel undertaken to customers as reflected in the expense sheets. The Commissioner notes that when Counsel for the Respondent questioned the Appellant’s CEO or the Appellant’s CFO in relation to the deficit of internal communications/records, the evidence was that it is much more informal with customers outside Dublin, no appointments are required to be made and that much of the interactions with the team of employees would have been done on telephone calls or verbally in the office about dropping into customers.

56. The Commissioner does not consider it credible that over the relevant period, there exists no email or written exchange of correspondence between the Appellant and its customers or employees in relation to travel and visits undertaken by the Appellant's CEO, the Appellant's CFO and a spouse. Moreover, there exists no receipts for subsistence such as a coffee/tea, sandwich or petrol whist making round trips from Dublin to Kerry or Cork. The Commissioner does not consider this to be credible in terms of the frequency and distance of travel alleged to have been undertaken by the Appellant's CEO, the Appellant's CFO and a spouse. The Commissioner notes that the evidence of the Appellant's CEO that he used cash. Nevertheless, this does not preclude the creation of a record in relation to purchases when travel is undertaken. The Appellant argues that the expenses claimed were wholly and exclusively incurred in the performance of their duties. However, there exists no credible record of the travel undertaken.

57. The Respondent states that the Appellant has not provided any evidence that the travel expenses paid to the Appellant's CEO, the Appellant's CFO and a spouse, were the reimbursement of expenses of travelling and subsistence in the performance of the duties of that office. The Respondent submits that in the absence of such evidence, the payments are emoluments in respect of which the Appellant ought to have deducted PAYE, PRSI and USC. The Commissioner agrees with that statement.

Section 886 TCA 1997

58. Section 886 TCA 1997 obliges a taxpayer who is chargeable to tax under Schedule D to keep records which would enable returns to be made for the purposes of income and corporation tax. Section 912 TCA 1997 extends those obligations to data which is maintained on a computer.

59. Records are defined in section 886(1) TCA 1997 as including accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process relating to, *inter alia*, all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place. Linking documents are defined as those which are drawn up in the making of accounts and showing details linking the records to the accounts must also be maintained. The records must be maintained for 6 years.

60. The Commissioner notes the Appellant's submission that the preparation and maintenance of the expense sheets constituted a record for the purposes of Section 886 TCA 1997, as it enabled the Appellant to make a tax return. The Appellant was not required to go beyond what is set out in the legislation.

61. As set out above, the Appellant submits that in preparing for engagement with the Respondent in 2021, the expense sheets were updated to correct the mileage rates to the civil service approved rates. However, the expense sheets were updated without a backup being taken and the original records were overwritten and dates were inadvertently changed. The Commissioner has considered the sworn oral testimony given in relation to this matter as aforementioned. The evidence of the Appellant's CEO was that the Appellant is not in breach of its obligation to keep records as the expense sheet was updated electronically and it recorded and maintained data concerning the nature of the trips (to customers), the mileage achieved, the rate and so on, therefore enabling the Appellant to correctly file its returns. Further, the Appellant's CFO gave evidence in relation to emails sent to the Appellant's financial controller recording the expenses claimed as per pages 1 and 2 of the Appellant's Index of Documentation.

62. As aforementioned, the Commissioner does not consider it credible that there exists no internal documentation or records to support travel undertaken. As set out above and as per the evidence given by the Appellant's CEO, there exists no receipts such as banking receipts/documentation to support any of the travel undertaken, such as the purchase of a lunch, dinner, refreshments or fuel on a round trip from Dublin to the other side of the country. There also exists no communications between employees or the Appellant and its customers in relation to customer visits. The Commissioner has considered the Respondent's Tax and Duty Manual for the tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees, Part 05-01-06, which was last updated in April 2023. The Commissioner notes that at paragraph 1.3 under the heading "Records to be kept" it states that:

"Where expenses are reimbursed based on an acceptable flat rate allowance (see Chapter 2.5), the employer must retain a record of:

- *The name and address of the director or employee,*
- *The date of the journey,*
- *The reason for the journey,*
- *The kilometres travelled,*
- *The starting point, destination and finishing point of the journey, and*
- *The basis for the reimbursement of travel and subsistence expenses [e.g. an overnight stay away from an individual's normal place of work].*

When reimbursing expenses vouched by receipts, the employer must retain such receipts, together with details of the travel and subsistence expenses incurred.

The period of retention of records is six years after the end of the tax year to which the records refer.

Queries about the adequacy of records to be maintained may be referred to the Revenue office dealing with the employer via MyEnquiries.”

63. Further, the Commissioner observes paragraph 4.6, Company directors, wherein at paragraph 4.6.1 under the heading “General” it states that:-

“Company directors (including non-executive directors) are officers of a company (even where they own, or part own, the companies of which they are directors) and, as such, are subject to the same tax legislation, rules and conditions as employees concerning the tax treatment of the reimbursement of expenses of travel and subsistence.

As with other office holders and employees, the reimbursement of expenses to a director (including a non-executive director) relating to travelling to and from her/his normal place of work - that is, the normal place of work in her/his capacity as a company director - is taxable and subject to PAYE deductions”.

64. The Commissioner accepts that certain expense sheets were kept, but considers that in addition, the Appellant should have retained records in accordance with section 886 TCA 1997. The Commissioner notes the evidence given during cross examination in relation to the inconsistencies in the records in the expense sheets and the evidence that whilst the records may have misaligned, there is no disputing that the travel was undertaken. The Appellant’s CEO testified that 100% of his role was sales and marketing which required him to undertake significant travel to customers. In relation to customers, the Appellant’s CEO confirmed in evidence that the customers that are reflected in the expense sheets contained in the Appellant’s Index of Documentation are all existing customers, such that the travel was not an effort to meet and obtain new customers, but to visit existing customers with the hope that “the butcher, the baker, the candlestick maker” and ██████████ would refer the Appellant to potential new customers.

65. The Commissioner did not find the evidence of the Appellant’s CEO or CFO to be persuasive in this regard. Both the evidence of the Appellant’s CEO and the Appellant’s CFO was inaccurate and inconsistent in terms of the travel undertaken. Moreover, both accepted that the expense sheets are inaccurate in terms of visits undertaken which were all reflected from the Appellant’s headquarters as a round trip to a particular location, yet on some occasions there were overnight stays and the record was therefore incorrect. In

addition, the evidence of foreign travel and a medical procedure were put to the Appellant's CEO which showed other inconsistencies in the expense sheets. The Appellant's CEO and the Appellant's CFO reiterated that the data was corrupted. The Commissioner does not consider that this is a credible explanation from the Appellant's CEO and the Appellant's CFO, directors of a [REDACTED] company that this information was not stored in the cloud, saved or that any other record exists to support the Appellant's position.

66. As set out above, in a tax appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Appellant, being the person with access to all of the facts and documents relating to its own tax affairs, is bound not only to retain documentation in accordance with the requisite statutory provisions (section 886 TCA 1997), but also to produce such documentation as may be required in support of an appeal, so as to meet the burden of proof.

67. For the reasons set out above, the Commissioner finds that the Appellant did not keep records in accordance with section 886 TCA 1997. Even if the Commissioner is wrong in her finding that records were not kept in accordance with section 886 TCA 1997, this does not interfere with her finding in relation to the assessments raised by the Respondent, as a finding that the Appellant did keep records, but inaccurate records, does not change the Commissioner's finding as to the correct tax to be paid by the Appellant.

68. The Appellant has not brought forward any additional evidence that demonstrates that the Notices of Estimation of Amounts Due and Notices of Assessment are incorrect. As set out above, there is a statutory obligation to retain documentation relating to tax affairs. The Commissioner finds that the Appellant has not succeeded in demonstrating that the travel expenses claimed, were incurred by the Appellant's CEO and the Appellant's CFO and a spouse in the performance of the duties of that office nor has the Appellant succeeded in demonstrating that the expenses were expenses expended wholly, exclusively and necessarily in the performance of those duties, such that the Notices of Estimation of Amounts Due and Notices of Assessment are incorrect. Hence, the appeal fails.

69. Consequently, the Commissioner is satisfied that the Appellant has not succeed in proving on the balance of probabilities that the Notices of Estimation of Amounts Due and Notices of Assessment raised by the Respondent are incorrect.

Determination

70. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in showing that the tax is not

payable. Therefore, the Notice of Estimation dated 16 December 2021 and Notice of Estimation and Notices of Assessment dated 6 December 2022 issued by the Respondent, in relation to the years 2016 to 2019 inclusive, in the total sum of €297,738, shall stand.

71. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax.

72. This appeal is hereby determined in accordance with Part 40A TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997. 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.

Notification

73. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

74. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
3rd October 2023