AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

91TACD2023

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal of a decision of the Revenue Commissioners ("the Respondent") of 28 January 2021 refusing the Appellant's claim for the deduction from his assessable income for the year 2020 of an expense in the amount of €3,355.46. The Appellant incurred this expense in respect of works carried out to his home ("the property") in July 2020, at which time he was required to work from that location. The works in question were carried out for the purpose of reducing the amount of radon prevalent in the property to levels safe for its occupants.

Background

2. In February 2020 the Appellant purchased the property, which is located in [redacted]. The Appellant, his wife and their [redacted] children reside there as a family.

3. The Appellant is a civil servant employed by a government department. On [redacted] he commenced working from the property as a consequence of the Covid-19 pandemic. He continued to do so for the remainder of 2020 in accordance with the regulations then in being.

4. The Appellant gave evidence that the property is in an area that has high levels of radon, as defined by European legislation set out at a later point in this determination. This fact was not disputed by the Respondent.

5. The Appellant gave evidence that he was aware prior to the purchase of the property that the area in question had high levels of radon.

6. The Appellant stated that in early [redacted] he acquired the services of an Environmental Protection Agency ("EPA") approved radon tester. This person carried out tests to the property and produced a report for the Appellant on 8 June 2020, which found it had high levels of radon throughout (average radon concentration 699 Bq/m3). The report strongly recommended that radon remediation works be carried out to the property so as to ensure the safety of all its inhabitants.

7. The Appellant described the works recommended to him as involving the drilling of a hole under the property so that a fan could be inserted to extract radon from the structure. Nothing turns on the precise nature of the remediation works.

8. In accordance with the findings of the report, the Appellant engaged an EPA approved contractor to carry out the radon remediation works. The Appellant gave evidence that this contractor informed him that his employer would be likely to pay for the works on the grounds that he was required by government restrictions to work from home during this period. The same person also advised the Appellant that if his employer refused to do so, he could in the alternative claim a deduction of the expense incurred by way of the submission to the Respondent of a tax return.

9. The Appellant said in evidence that he considered that he was entitled to reimbursement or relief in respect of the works because his employer was under a statutory duty under health and safety legislation to provide him with a safe working environment. He also emphasised that under the same legislation it was incumbent on him as an employee to make reasonable provision for his own safety and welfare.

10. Counsel for the Respondent asked the Appellant in cross-examination whether he always intended to have the remediation work carried out regardless of the move to remote working on [redacted]. In answer to this the Appellant stated unequivocally: "*Yes, essentially. Whether* [the employer] *paid for it or not, it was essential*."[1] The Appellant's evidence was that this was so because, were he to have left the property in the same state

[1] Transcript of hearing, p25, line 9.

in which he acquired it, his health and that of his family would have been endangered by the effects of high levels of radon.

11. Following the completion of the works, the Appellant duly made a claim to his employer for the reimbursement of their cost. His employer declined to reimburse this sum.

12. On 7 January 2021, the Appellant filed a Form 12 return for the year 2020 in which he claimed as a deduction from his assessable income the sum of €3,355.46 expended on the radon remediation works.

13. On 28 January 2021 the Respondent issued a decision refusing the Appellant's claim on the grounds that the works amounted to renovations and improvements to his family home, which were not expended "wholly exclusively and necessarily" in the performance of his duties of employment. This decision was appealed by way of Notice of Appeal delivered to the Commission on [redacted].

Legislation

14. Both the Appellant and the Respondent made submissions concerning the correct interpretation of the wording of section 114 of the TCA 1997, which sets out the "general rule" as to deductions in respect of Schedule E income. This 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."*

15. In addition to relying on the wording of this provision, the Appellant referred in the course of the hearing to obligations arising from the Safety, Health and Welfare at Work Act 2005 ("the 2005 Act"). This gives further effect to Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work. Section 8 of the 2005 Act provides that every employer shall ensure so far as practicable the health, safety and welfare at work of their employees.

16. The Appellant also emphasised the significance of section 13 of the 2005 Act, which provides that he, as an employee, shall:-

> *"*[…] *comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his* […] *safety, health and welfare and the safety, health and welfare of any other person who may be affected by* [his] *acts or omissions at work*."

17. Lastly with regard to the 2005 Act, the Appellant cited section 77 and 81 therein. These provide, respectively, that it is an offence not to comply with obligations imposed under sections 8 and 13 of the same legislation and that the onus rests in proceedings relating to such an offence on an accused person to prove that it was not practicable to do more than was in fact done.

18. The Appellant cited numerous European Directives and Treaty articles in the course of written and oral submission. Included among these was Directive 2013/59/EURATOM ("the 2013 Directive"), which lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. In particular, the Appellant drew attention to several of the recitals therein. Included among these was number 22 relating to epidemiological studies in residential settings revealing an increased risk of lung cancer from prolonged exposure to indoor radon at levels of the order of 100 Bq m-3. Also included was number 23 relating to the need for Member States to adopt national action plans to address long-term risk from radon exposure.

19. In addition to these recitals, the Appellant cited a variety of articles in the 2013 Directive that he suggested were relevant to the issues arising in this appeal. Among these were: Article 5 requiring the establishment of legal requirements and a regulatory regime for all "exposure situations" to radiation; Article 54 requiring the establishment of reference levels for radon concentrations in the workplace that shall not exceed 300 Bq m–3 for the annual average activity concentration in the air; and Articles 100, 103 and 105 requiring Member States to take measures to identify and evaluate existing "exposure situations", develop a national action plan for long-term risks regarding radon exposure in dwellings and workplaces and ensure that a "competent authority" has powers to enforce regulatory measures.

20. The Appellant referred to various articles of the Charter of Fundamental Rights of the European Union ("the CFEU"). These included those concerning, human dignity, the right to life, the right to bodily integrity, respect for private and family life, the freedom to engage in work, the rights of the child, the right to fair and just working conditions, the right to health care, environmental protection and the right to an effective remedy. He also placed emphasis on Articles 20 and 21. The former of these provides that "*Everyone is equal before the law"* and the latter that:-

> *"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."*

Submissions

Appellant

21. The following is a summary of the Appellant's submissions. While the Appellant made reference to copious case law and legislation, the Commissioner refers in this determinations only to those that he considers necessary to the determination of the issues in this appeal.

22. Regarding the interpretation of section 114 of the TCA 1997, the Appellant submitted:-

> "[It] *specifically permits deduction for work-related expenses. The interpretation of this provision, as advanced by Revenue in my case, is so restrictive that no expense could be claimed, which is absurd."*

23. In this regard the Appellant submitted that the Commissioner should not follow a line of mostly English and Welsh authorities relied on by the Respondent (referred to in the subsequent part of this Determination), which stress the stringency of the general rule governing deductions. He did, however, submit that one such authority, *Revenue and Customs Commissioners v Banerjee,* [2011] 1 ALL ER 985, indicates that the "exclusively" element of the general rule, whereby no expense incurred other than in the performance of the duties of employment is deductible, has been overruled in that jurisdiction. The same approach, he submitted, should be adopted in the determination of his own claim, with the consequence that it should be allowed.

24. *Revenue and Customs Commissioners v Banerjee* was a decision of the Court of Appeal of England and Wales that concerned a claim by a medical registrar for the deduction of expenses related to training courses. The Revenue and Customs Commissioners of the United Kingdom relied on previous authorities relating to the scope of the general rule to support the proposition that such a cost could not be understood to have been incurred "wholly and exclusively" in the performance of the Appellant's medical duties. However, Rimer and Hooper LJJ held that the deduction was allowable because of the General Commissioner's finding of fact that the fulfilment of the training was an "intrinsic" part of the medical registrar's duties under her contract and that any personal gain to her was merely "incidental" (in this respect the court cited *Elwood v Utitz (Inspector of Taxes),* [1966] 42 TC 482).

25. The Appellant submitted that *Revenue and Customs Commissioners v Banerjee* indicated that any "duality of purpose" suggested by the Respondent relating to a benefit to himself and his family as residents of the property should not preclude the allowance of his claim.

26. The Appellant submitted in relation to his duties of employment that:-

> "*The 2005 Act* […] *places significant statutory obligations not only on my employer but also on me personally as an employee and as a person in charge of access and egress from my home base/workplace. Such is the standard of care required by the Oireachtas under section 81 of this Act that the burden of proof is reversed such that the accused person must prove that it was not practicable, or not reasonable to do more than was in fact done to satisfy the duty or requirement."*

27. The Appellant submitted that the level of radon in the property was significantly higher than the maximum safe level enumerated in the 2013 Directive in respect of workplaces. As the property was used during the period from [redacted] to the end of [redacted] as his workplace as well as his home, part of the performance of his duties was to ensure that he had a safe working environment. As such, his employer was under a duty either to reimburse him for his expenditure or, alternatively, the Respondent had to allow the deduction of the sum from his assessable income.

28. The Appellant further submitted that by refusing to allow the deduction, the Respondent was failing in its duty to protect his safety and health and that of his family. This was not just contrary to national legislation, it also was in breach of directly effective EU law including the 2013 Directive. In written argument he contended that remediation measures are mandated under this legislation and:-

> "*The Respondent is not permitted to frustrate the operation of these EU protections by seeking to narrowly interpret predating domestic legislation so as to deny relief for the cost of these remediation measures, where my employer has refused to refund them*."

29. In respect of this submission the Appellant referred in written argument to numerous EU authorities relating to the long established principals of direct effect and supremacy (for instance *Van Gend en Loos v Nederlanse Tarief Commissie* (ECLI:EU:C:1963:1), *Costa v ENEL* (ECLI:EU:C:1964:66), *Amministrazione delle Finanze v Simmenthal SpA* (ECLI:EU:C:1976:180) and *The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others* (ECLI:EU:C:1990:257)).

30. The Appellant further submitted that the refusal of the deduction claim was in violation of the Articles of the CFEU set out in the preceding part of this Determination. In this regard the Appellant stated in oral submission:-

> […] *Section 114 needs to be interpreted consistently with the other law; so the health and safety law. You can't interpret section 114 in a vacuum. Section 114 needs to be*

interpreted in the light of all the other health and safety rules, all the protected EU rights: the right to life; the right to protection for your family and the special place that enjoys; the special place that children's rights should enjoy.

31. He also submitted in relation to Article 2 of the CFEU concerning the right to life:-

> "[…] it is *a balance here* […] *radon is a very, very serious health issue and taxation needs to be proportional to the effort that it's trying to achieve; effectively, taking it to extremes, causing somebody to die and not give them a relief because they couldn't afford this, is going too far.* […] *there is a hierarchy of rights within the EU that needs to be respected."*[2]

32. The Appellant also cited the judgment in *Sabbatini v European Parliament* (ECLI:EU:C:1972:48), which he submitted supported the proposition that he was subjected to unequal treatment and discrimination contrary to Articles 20 and 21 of the CFEU.

33. *Sabbatini* concerned the withdrawal of expatriation allowance from an official of the European Parliament upon her marriage. The retention of this allowance was only permitted following marriage if one held the status of "head of the household" pursuant to the Staff Regulations of Officials of the European Communities then extant. These Regulations defined such a person as normally being a married male official. As a female official could only be considered to fall within the definition in exceptional circumstances, which she did not meet, the official in question lost the allowance. This was held by the court to be an example of an arbitrary difference in treatment between persons in the same position based on sex. As such treatment which was contrary to Article 119 of the EEC Treaty, the decision taken with regard to the official was annulled.

34. The Appellant submitted that the unequal treatment in his case stemmed from the allowance of claims made by employees under the flat rate expenses regime, the e-working expense regime, those paying annual professional subscriptions, and local councillors. The Appellant submitted in his Outline of Arguments that:-

> *"The very existence of these special procedures attests that Revenue is not administering Section 114 TCA equitably. There is a clear bias in the concessions afforded to Revenue's favourites."*

35. Not only did the Appellant submit that his claim should be allowed on the grounds that his charter rights had been breached, he further submitted that he had a legitimate expectation

[2] Transcript of hearing, p60, line 10.

that his claim would be allowed. This expectation was, he said, based on the aforementioned treatment of the claims of others, which he said was inconsistent with the scope of section 114 of the TCA 1997 as suggested by the Respondent, and on the contents of its own Tax and Duty Manual relating to deductions under that provision. In this regard he submitted that it made reference to an expense incurred in compliance with a statutory obligation falling within the "*wholly exclusively and necessarily"* test. The Appellant submitted that the Commission should find in his favour on this ground on the basis that legitimate expectations is a principle of EU law and thus is a matter that must be taken into consideration in deciding the appeal. In this regard the Appellant cited, among other judgments, that of *Deuka Deutsche Kraftfutter GmbH B. J. Stolp v Einfuhr und Vorratsstelle für Getreide und Futtermittel* [ECLI:EU:C:1975:88].

Respondent

36. The Respondent submitted that the expense which the Appellant sought to deduct fell outside what was permitted by section 114 of the TCA 1997. Before embarking on analysis of the provision, counsel for the Respondent drew the Commission's attention to well-known case of *Revenue Commissioners v Doorley,* [1933] I.R. 750, in which the Supreme Court held that if a tax is imposed clearly by statute, then any exempting provision must be interpreted strictly. Counsel submitted that what was at issue here was, first of all, the interpretation of such a provision. On this basis, unless the Appellant's claim fell clearly within its parameters it should not be allowed.

37. Regarding the correct interpretation of section 114 of the TCA 1997, the counsel opened several judgments of the courts of England and Wales concerning the identically worded general rule in that jurisdiction. In *Lomax v Newton,* [1953] 1 W.L.R. 1123, Vaisey J held at page 1125 in a case relating the deduction of expenses incurred by an officer in the territorial army:-

> "*…I would observe that the provisions of* [the general rule] *are notoriously rigid, narrow and restricted in their operation. In order to satisfy the terms of* [the general rule] *it must be shown that the expenditure incurred was not only necessarily but wholly and exclusively incurred in the performance of the relevant official duties. And it is certainly not enough merely to assert that a particular payment satisfies the requirements* of [the general rule] *without specifying the detailed facts on which the finding is based. An expenditure may be "necessary" for the holder of an office without being necessary to him in the performance of the duties of that office. It may be necessary in the performance of those duties without being exclusively referable to those duties. It may, perhaps, be both necessarily and exclusively, but still not wholly, so referable. The*

words are, indeed, stringent and exacting. Compliance with each and every one of them is obligatory if the benefit of the rule is to be claimed successfully. They are, to my mind, deceptive words in the sense that, when examined, they are found to come to nearly nothing at all."

38. In the Irish authority of *SP Ó Broin v Mac Giolla Meidhre,* [1959] IR 98, Teevan J, quoted with approval the following words of Lord Blanesburgh in relation to the operation of the general rule in the judgment of the Court of Appeal of England and Wales in *Ricketts v Colquhoun,* [1926] AC 1:-

"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."

39. *Ricketts v Colquhoun* concerned an attempt by a barrister based in London to deduct from his income travel expenses incurred in the course of getting to Portsmouth where he held the positon of Recorder. In refusing this claim, Viscount Cave LC stated at page 134 of his judgment that:-

"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."

40. Like the Appellant, counsel for the Respondent also relied on *Revenue and Customs Commissioners v Banerjee.* He did not agree however that it indicated any expansion in the interpretation of the general rule. Rather, the finding of the Court of Appeal that the medical registrar was entitled to deduct was based on an earlier finding of fact by the General Commissioner that her contract was a training contract, the whole purpose of which was to require her to undergo training so that the National Health Service ("NHS") would benefit from the supply of suitably qualified consultant doctors. On this basis, the General Commissioner concluded that her sole purpose in incurring expenses in training was to fulfil the obligation imposed on her by her NHS contract. This was clear, submitted

counsel for the Respondent, from paragraph 38 of the Court of Appeal's judgment, in which Rimer LJ held:-

> *"I am* […] *of the view that the better view of the General Commissioners' finding is that they were not in fact finding that Dr Banerjee was motivated by any* […] *dual purpose."*

41. Counsel noted however that in the preceding paragraph Rimer LJ had observed that:-

> "*If the General Commissioners' finding was that she did have such a dual purpose, I would have my doubts as to whether she could claim that she incurred the relevant expenditure 'exclusively' in the performance of the duties of her employment."*

42. Counsel submitted that the law remained that if there was any purpose whatever in the incurring of the expenditure on the radon remediation works other than the performance of the duties imposed on the Appellant by his role, he could not deduct. Counsel submitted that the Appellant's own evidence was crystal clear. His foremost consideration and purpose in having the works done was to care for his own well-being and that of his family. In answer to the question as to whether he would have had the work carried out regardless of work from home protocols, he replied that he would have. This represented a duality of purpose that precluded the Appellant from being allowed the deduction claimed against his taxable income in his Form 12 return.

Material Facts

43. The facts material to this appeal were not in fact in dispute. They were as follows:-

- the Appellant purchased the property in February 2020. He resides there with his wife and [redacted] children;
- the area in which the Appellant purchased the property is one recognised as having high levels of radon. The Appellant was aware of this fact prior to purchasing the property;
- in [redacted] the Appellant acquired the services of an EPA approved radon tester. This person produced a report dated 8 June 2020, which confirmed that the average level of radon throughout the Appellant's house was 699 Bq m–3.
- radon exposure in the home that exceeds 100 Bq m–3 is deemed to give rise to a high level of risk;
- radon exposure in the workplace that exceeds 300 Bq m–3 is deemed to give rise to a high level of risk;

- from [redacted] to the end of [redacted] the Appellant worked from the property in accordance with the Covid-19 government guidelines then in place;
- in accordance with the findings of the tester's report, the Appellant acquired the services of an EPA approved contractor to perform radon remediation works to the property;
- the Appellant had these works carried out because they were essential for the preservation of the health and safety of his family in their place of residence. The Appellant would have carried out the works regardless of the requirement that he work from the property during the period [redacted] to the end of [redacted]
- these works cost the Appellant €3,355.46;
- the Appellant is a civil servant and PAYE employee of a government department;
- the Appellant made a claim to his employer for the reimbursement of the cost of the remediation works. He made the claim on the grounds that pursuant to legislation both it and he had obligations to take reasonable measures to ensure that the environment in which he was working was safe;
- the Respondent refused to reimburse the Appellant for the cost of the radon remediation works carried out to the property;
- by way of Form 12 filed for the year 2020, the Appellant claimed the deduction of the expense incurred in respect of the radon remediation works from his taxable income for that year;
- on 28 January 2021, the Respondent refused the Appellant's claim for the deduction of the expense incurred.

Analysis

44. The first matter to address in this part of the Determination is the scope of the Commission's jurisdiction. In *Lee v Revenue Commissioners [2021] IECA 18* the Court of Appeal held that its function is to determine whether tax is owed under relevant taxing legislation and, if it is, to establish the correct amount.

45. Questions concerning the constitutionality of legislation governing taxation fall outside the jurisdiction conferred on the Commissioner by the Oireachtas. However, in interpreting domestic legislation, the Commissioner must ensure that it is consistent with relevant directly effective EU legislation and with principles enshrined in the CFEU, which also

forms part of EU law. If national legislation cannot be read in a manner consistent with relevant EU law, it must be disapplied. This is clear from the paragraph 74 of *Lee V Revenue Commissioners,* where the Court of Appeal held:-

> *"*[…] *the Appeal Commissioners are necessarily invested with the power to disapply domestic legislation which they determine to be incompatible with European law. The principle is only engaged where the Appeal Commissioners are dealing with an issue within their remit, whether in an appeal against an assessment to tax or otherwise. It was suggested that this in some sense implied a broadening of their jurisdiction as a matter of national law. This does not at all follow. The Workplace Relations Commission decision applies a principle of European law operative where a national tribunal is seized with a dispute, requiring that it give effect to the supremacy of European law in the course of determining that dispute. If a taxpayer wishes to contend that the application of a particular provision of the TCA breaches EU law, then the Appeal Commissioners must address that contention if it is relevant to the matter with which they are seised and, if it is appropriate and necessary to do so to decide that case, to disapply the provision or otherwise exercise their powers so as to ensure that EU law is not violated. The same principle dictates that the Appeal Commissioners may entertain claims based upon the doctrine of abuse of rights in European law. These principles derive from the mandates of European law. Neither expand the jurisdiction of the body as a matter of national law."*

46. With this in mind, the Commission turns firstly to the interpretation of section 114 of the TCA 1997. The authorities cited by the Respondent all point to the test prescribed by that provision for the deduction of expenses being exceptionally stringent. What is required is that the employee was necessarily obliged by their duties to incur the expense sought to be deducted. If there is any reason for the incurring of the expense unrelated to the performance of the duties then no deduction can be permitted.

47. The Appellant questioned whether the interpretation of the provision applied by the English and Welsh courts in cases such as *Lomax (HM Inspector of Taxes) v Newton* and *Ricketts v Colquhoun,* [1926] AC 1 should be followed in this jurisdiction, calling it "absurd". However, this authority was applied by Teevan J in the binding authority of *SP Ó Broin v Mac Giolla Meidhre,* [1959] IR 98. The Commissioner finds that these judgments from England and Wales, which relate to an identical provision, accurately represent the scope of what can be deducted under section 114 of the TCA 1997 in this jurisdiction.

48. In relation in particular to *HMRC v Banarjee,* the Commissioner finds that this judgment is not suggestive of more expansive reading in recent times of the equivalent provision in

England and Wales. While the Appellant in that case was found on the facts to have met the test for the allowance of her expenses relating to training connected with her position of medical registrar, Henderson J re-emphasised that the use of the word "*exclusively"* has the effect that any duality of purpose in incurring an expense is fatal.

49. The Appellant in this appeal could not have been clearer in his evidence at hearing. He did not carry out the radon remediation works on account of the remote working protocols that were put in place in the middle of [redacted]. They would have occurred irrespective of this event because his own safety and wellbeing and that of the other members of his family was at risk if they left the property in a condition whereby it had an average level of radon significantly higher than the maximum safe level recommended for a permanent residence.

50. It happened that, having had the work done, the person in question who carried it out informed the Appellant that he could ask his employer to foot the bill for it or, if it refused to do so, could seek a deduction against his assessable income. The Commissioner expresses no view on the question of whether the employer may have been obliged by law to reimburse the Appellant. If there was such an obligation, that was and may remain a matter between the Appellant and his employer.

51. The question of whether health and safety law required the employer and/or the Appellant to ensure the safety of the working environment at the property can have no impact on the outcome of this appeal because of the Appellant's evidence referred to in the preceding paragraph. Whether he had in his mind in carrying out the works concerns regarding his obligations under employment law does not change the fact that, at a minimum, there was "duality of purpose" behind them. As has consistently been held in cases analysing the general rule relating to deductions, such duality precludes deduction by a PAYE employee. As the Commissioner has held already in this determination, these cases regarding the general rule, mostly emanating from England and Wales, accurately reflect the scope of what can be allowed under section 114 of the TCA 1997. As such, the Appellant's claim cannot be held to fall within it.

52. The Appellant argued, however, that if the ordinary meaning of section 114 of the TCA 1997 was found to be in accordance with the aforementioned case-law, then it would violate directly effective EU law. As such the provision had to be interpreted, if possible, in a manner consistent with the mandates of EU law or, if it could not be so interpreted, disapplied.

53. The Commissioner finds this aspect of the Appellant's appeal to be altogether misconceived. That the Appellant's employer bore obligations under EU law and national

law to protect his safety, health and welfare at work is not in doubt. It is not, however, the function of the Commission to determine whether these obligations were met and to seek to give effect to them through the tax code. The sole question to be determined in this appeal is whether any of the sources of EU law identified by the Appellant mandate that the radon remediation costs incurred be allowed as a deductible expense from assessable income, such that section 114 of that TCA 1997 be interpreted in accordance with this mandate or, if it cannot, disapplied.

54. None of the many provisions of European legislation that the Appellant cited in written and oral argument make any relief in respect of radon remediation costs mandatory. The Commissioner can identify nothing in, for example, the 2013 Directive laying down basic safety standards in relation to ionising radiation that addresses in any way the operation of a Member State's system of taxation.

55. Likewise, the Commissioner cannot see how it can be said that the failure of the Respondent to allow the Appellant's deduction claim breaches any of his fundamental rights. The Appellant was not prevented from performing the works to the property. His complaint was rather that they were not paid for by another or subject to relief. The decision of the Oireachtas to legislate in a manner that does not confer on the Appellant a right of deduction in relation to the cost of the works in question does not itself infringe his right to life or bodily integrity, or that of the other members of his family. It does not infringe any of the other rights that he identified.

56. Nor did the failure of the Respondent to allow the deduction constitute unequal treatment before the law and discrimination, contrary to his rights under Articles 20 and 21 of the CFEU. In this respect he pointed to the allowance of tax relief to certain PAYE taxpayers under the Flat Rate Expenses regime and in respect of annual professional memberships. He also cited the treatment of local councillor's expenses. Whether deductions have been allowed by the Respondent in relation to such expenses and whether or not they might fall within the scope of section 114 of the TCA 1997 are questions that are irrelevant to the determination of this appeal, which relates to the claiming of an entirely different expense by the Appellant.

57. Article 20 states that all are equal before the law. Article 21 of the CFEU, entitled "non-discrimination", prohibits the differing treatment of people on the basis of grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

58. The limit of the Commissioner's jurisdiction, as indicated in *Lee v Revenue Commissioners* is to consider whether section 114 of the TCA 1997 violates rights bestowed on him under the CFEU. There is no basis for the suggestion that this provision results in discrimination against him on any grounds akin to those specified in Article 21 of the CFEU. The way for the Commission to ensure that justice is administered equally in accordance with the requirements of Article 20 of the CFEU is for it to examine the nature of the expense incurred by the Appellant and then apply the general rule governing deductions under section 114 of the TCA 1997 in accordance with settled case law. This has been done, with the result that the Appellant's claim has been held to fall outside its ambit and must be refused. On these grounds, the Appellant's appeal fails.

Determination

59. The Commissioner finds that the cost of the radon remediation works carried out to the Appellant's property, which for the year 2020 functioned both as his family home and his place of work, was not incurred wholly and exclusively in the performance claim of his duties as a civil servant. Furthermore, the Appellant finds that the section 114 of the TCA 1997 is not contrary to directly effective EU law and the Appellant's rights under the CFEU. Consequently, the Respondent's decision refusing the deduction of the sum of €3,355.46, expended for this purpose, against his taxable emoluments for that year was correct in law and must stand. The Commissioner appreciates that the Appellant may be disappointed with this determination and was correct to seek clarification on his legal rights.

60. This appeal has been determined in accordance with section 949AL of the TCA 1997. This determination contains full findings of fact and law. Any party dissatisfied with the determination has the right to appeal on a point or points of law only within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.

Conor O'Higgins
Appeal Commissioner
17th April 2023