AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

01TACD2024

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against a Notice of Amended Assessment to income tax dated 31st December 2021 raised by the Revenue Commissioners (hereinafter "the Respondent"), in respect of the tax year 2020. The amount of income tax sought on that assessment is €7,342.40 which includes a late filing surcharge of €349.63 under section 1084 Taxes Consolidation Act 1997, as amended (hereinafter "TCA 1997").

2. The Appellant appealed the Notice of Amended Assessment to the Commission on 28th January 2022 in accordance with the provisions of section 933 TCA 1997. The oral hearing of the appeal took place remotely on 8th May 2023. The Appellant was represented by his accountant and the Respondent was represented by Counsel, its solicitor and two members of staff.

Background

3. The Appellant, a plasterer by trade, filed his income tax return ("Form 11") for 2020 through the Revenue Online System ("ROS") in December 2021. ROS is the Respondent's electronic filing system which provides a facility to taxpayers to allow them to avail of

certain services which include the filing of taxation returns, the payment of taxation liabilities and it also provides the taxpayer with the ability to view their taxation affairs. The Appellant's filed Form 11 showed that a balance of tax in the sum of €6992.77 was payable by him and the additional sum of €349.63 in respect of a late filing surcharge, making a total payment due of €7,342.40.

4. As the Appellant paid the sum of €500 in preliminary tax for 2020, this reduced his liability for 2020 to €6,842.40.

5. Included within the Appellant's 2020 Income Tax Return was a calculation of the tax payable by him. Underneath that calculation was a note which stated:

   "*RCT[1] of €7,326 has been withheld under tax ref* [redacted] *and needs to be allocated to this taxpayer*".

6. Arising from that note, the Appellant's calculation showed that he was due a refund of tax in the amount of €483.60 in respect of the tax year 2020 (being €6,842.40 - €7,326).

7. The tax reference number quoted in the Appellant's note was not that of the Appellant but rather that of a limited company, [redacted] Ltd.

8. That company was also involved in the plastering trade and was owned 100% by the Appellant who was also the sole director of the company. The company was dissolved[2] by the Companies Registration Office in April 2017 but the Appellant continued to invoice principal contractors using the dissolved company's tax reference number throughout 2017, 2018, 2019, 2020 and 2021.

9. The Respondent informed the Appellant's agent that it had sought legal advice on whether it could transfer the amount of RCT deducted in the company's name in 2020 to that of the Appellant so that he could use the amount of RCT as a credit against the income tax that he owed for 2020. As that legal advice stated this was not possible, the Respondent informed the Appellant's agent of this position and that it was seeking the payment of the balance of tax for 2020, in the sum of €6,842.40, from the Appellant.

10. The Appellant who was not in agreement with the Respondent's decision, submitted his Notice of Appeal to the Commission on 28th January 2022.

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[1] Relevant Contracts Tax ("RCT") is a withholding tax that applies to certain payments by principal contractors to subcontractors in the construction, forestry and meat-processing industries. The rates of withholding tax are 0%, 20% and 35%.

[2] Once a company is dissolved, it no longer exists as a legal entity and cannot conduct business or enter into contracts.

11. The Appellant's agent had engaged in correspondence with the Respondent both pre and post the submission of the Appellant's appeal.

12. This correspondence began on 14th February 2020 when the Appellant's agent wrote to the Respondent and stated:

> "*Dear Sirs, since [redacted] 2017 [redacted] Ltd. has been dissolved in the CRO. During 2018 and 2019 [redacted] continued to use the company tax number with regards to RCT. I now have the problem when completing a tax return for him for 2018 that the RCT deducted on the payments to him are all on the system as [redacted] Ltd. rather than under his name. Can you send me a history of RCT deducted [sic] 2017, 2018 and 2019 and can you tell me what the process is to have it reallocated to him? Thanks.*"

13. The Respondent replied to this correspondence as follows on 17th February 2020:

> "*You are able to view all payments on file for the company on ROS. You would need to submit a list of the payments received by your client which would then have to be submitted to the computer helpdesk and ask them to transfer the payments across*".

14. Subsequently, on 26th February 2020, the Appellant's agent wrote to the Respondent and stated:

> *"I attach a list of 2018 RCT deducted on behalf of [redacted] Ltd. [redacted] but which needs to be reassigned to [redacted] for the 2018 tax year in order to finalise his affairs…*"

15. On 25th March 2020, the Respondent replied:

> "*The email was referred to a manager and the response was that we do not have the facility to transfer the payments…*"

16. The Appellant's agent replied the day following and stated:

> "*I am not sure, but if I understand correctly, the software that you operate with will not allow you to reallocate the RCT to [redacted]. There must be some "work around" that can be done such that the Collector General will not seek to recover RCT from this taxpayer that has already been deducted. Can you provide me with a letter that I can go to the Collector General with or where do you suggest I go next? Thanks*"

17. On 31st March 2020, the Respondent advised the Appellant's agent that it would make further enquiries to see if assistance could be afforded, but that might take some time.

18. On 4th January 2022, the Appellant's agent wrote further to the Respondent and stated:

"*Dear Sirs,*

I have an unusual tax problem. Essentially my client used a dissolved company name to get paid for plastering work and suffered RCT in that dissolved company name. I understand that a dissolved company does not exist the income is properly his income and we have done tax returns accordingly. Getting credit for the RCT is my problem. I understand there may be software issues where the programme does not easily cater for this but there must be a workaround we can all agree otherwise it will be unfair on the taxpayer. I would appreciate some help with this as to me this is just procedural…"

19. The Respondent replied on 11th February 2022 and stated:

"*I refer to your recent correspondence and apologise for the delay in reply. Your email was sent to the self-assessment IT area and is only now with my section (RCT).*

I also can see that your client recently submitted a formal appeal to TAC in relation to the issue.

To enable me to resolve this, I will need more information. Can you now please forward me:

- *A list of all payments paid to the LTD company ([redacted] Ltd.) that related to you client ([redacted]).*
- *An explanation as to how/why these payments have been notified under the company number and not your client's PPS number.*
- *Please also explain why the payments are still being returned under this incorrect number.*
- *A schedule of the sales returned in your client's form 11 for each year 2017-2020, showing these payments have been returned under his own PPS number.*"

20. On 22nd February 2022, the Appellant's agent replied and provided responses to the above questions raised by the Respondent on 11th February 2022. Later that day, the Appellant's agent wrote further and stated "*I also attach a CRO statement on [redacted] should [sic] the date of dissolution to be [redacted]2017.*"

21. Following an acknowledgment email in which the Respondent advised that it needed time to review the matter, it wrote to the Appellant's agent on 14th April 2022 and stated:

"*I refer to our recent correspondence in relation to the appeal lodged with the Tax Appeal Commission by* [redacted].

We sought legal advice on the matter, which was that since a dissolved company does not have legal existence, Revenue cannot refund money to it.

I am also concerned that the Payment Notification are still appearing with this dissolved company and you are urgently required to resolve this matter with the principal contractor."

22. Subsequent correspondence exchanged in which the Appellant's agent filed outstanding tax returns for [redacted] Ltd. and following which the Respondent stated that it would review the matter further.

23. The Respondent completed its review on 18th May 2022 and advised the Appellant's agent of the position by correspondence the same day. It stated:

"*I refer to your recent correspondence.*

I have carried out an extensive review of this case and wish to advise Revenue are not in a position to transfer RCT credits from one entity to another. In actual fact there is no provision in the RCT legislation for a RCT credit to be transferred to another person.

We have reviewed all the facts in this case with the main point being that your client's company ([redacted] Ltd.) continued to trade after the company was dissolved, this was in fact illegal.

Your conclusion that there is a simple answer to the situation your client finds himself in is in fact a wholly incorrect assumption to make.

You seem to have failed to understand the seriousness of the situation that has evolved from your client trading illegally. We cannot transfer or refund monies to anyone involved in trading illegally.

You can, of course, put your arguments to the Appeal Commissioners when this case is called before the Commissioners.

We await an Appeal hearing date."

24. The Appellant's agent replied on the same date and stated *"Thank you* [redacted] *for your comments. As you can imagine we will have to proceed to the Appeal Commissioners on this matter.*"

Legislation

25. The legislation relevant to this appeal is as follows:

Section 18 TCA 1997 – Schedule D

(1) The Schedule referred to as Schedule D is as follows:

SCHEDULE D

1. Tax under this Schedule shall be charged in respect of—

(a) the annual profits or gains arising or accruing to—

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

…

(2) Tax under Schedule D shall be charged under the following Cases:

Case I — Tax in respect of—

(a) any trade;

…

Section 27 TCA 1997 – Basis of, and periods for, assessment.

(3) An accounting period of a company shall end for the purposes of corporation tax on the first occurrence of any of the following—

(a) the expiration of 12 months from the beginning of the accounting period,

(b) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period,

(c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax.

(d) the company beginning or ceasing to be resident in the State, and

(e) the company ceasing to be within the charge to corporation tax.

Section 530 E TCA 1997 – Rates of tax

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

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

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

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

(d) shall, in the case of a partnership, be the highest rate that would apply to any of the individual partners following a determination by the Revenue Commissioners under section 530I.

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

Section 530 O TCA 1997 – Computation of subcontractor's profit.

In computing, for the purposes of Schedule D, the profits or gains arising or accruing to a subcontractor who receives a payment from which tax has been deducted in accordance with section 530F, the payment shall be treated as being of an amount equal to the aggregate of the net amount received after deduction of the tax and the amount of the tax deducted.

Section 530P TCA 1997 – Treatment of deducted tax.

(1) Where a principal deducts tax from a payment to a subcontractor in accordance with section 530F, such tax shall be treated as a payment on account by the subcontractor—

(a) of income tax for that tax year, where the tax was deducted in the basis period for a tax year, or

(b) of corporation tax for that accounting period, where the tax was deducted in an accounting period of a company.

(2) For the purposes of this Chapter, tax treated in accordance with subsection (1) shall be known as deducted tax.

(3) (a) Deducted tax shall be available for offset by the Revenue Commissioners against other tax liabilities of a subcontractor and in this subsection 'tax' has the same meaning as in section 960A.

(b) The Revenue Commissioners shall notify a subcontractor of the amount of deducted tax, if any, which is offset against other tax liabilities of the subcontractor.

(4) Where an assessment to income tax or, as the case may be, corporation tax has been made in relation to a subcontractor for a chargeable period, then deducted tax related to that period less any amount which is either—

(a) required to meet the income tax or, as the case may be, corporation tax liability of the subcontractor, or

(b) offset against other tax liabilities of the subcontractor under subsection (3),

may, subject to section 865, be repaid to the subcontractor.

(5) No repayment of deducted tax shall be made, except in accordance with subsection (4).

(6) No amount of deducted tax shall be treated as a payment on account, set off or refunded more than once and no amount of deducted tax set off under subsection (3) or refunded under subsection (4) shall be treated as a payment on account.

Section 933 TCA 1997 – Appeals against assessment.

(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as "other

officer") shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

…

Section 1084 TCA 1997 – Surcharge for late returns.

(1) (a) In this section—

"chargeable person", in relation to a year of assessment or an accounting period, means a person who is a chargeable person for the purposes of Part 41A;

"return of income" means a return, statement, declaration or list which a person is required to deliver to the inspector by reason of a notice given by the inspector under any one or more of the specified provisions, and includes a return which a chargeable person is required to deliver under Chapter 3 of Part 41A;

"specified return date for the chargeable period" has the same meaning as in section 959A;

"specified provisions" means sections 877 to 881 and 884, paragraphs (a) and (d) of section 888(2), and section 1023;

"tax" means income tax, corporation tax or capital gains tax, as may be appropriate.

(b) For the purposes of this section—

(i) (I) subject to clause (II), where a person deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or carelessly delivers an incorrect return of income as set out in section 1077F(2), as appropriate, on or before the specified return date for the chargeable period, the person shall be deemed to have failed to deliver the return of income on or before that date unless the error in the return of income is remedied on or before that date,

(II) clause (I) shall not apply where a person—

(A) deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or carelessly delivers an incorrect return of income as set out

in section 1077F(2), as appropriate, on or before the specified return date for the chargeable period, and

(B) pays the full amount of any penalty referred to in any of the provisions referred to in subclause (A) to which the person is liable,

…

(2) (a) Subject to paragraph (b), where in relation to a year of assessment or accounting period a chargeable person fails to deliver a return of income on or before the specified return date for the chargeable period, any amount of tax for that year of assessment or accounting period which apart from this section is or would be contained in an assessment to tax made or to be made on the chargeable person shall be increased by an amount (in this subsection referred to as "the surcharge") equal to—

(i) 5 per cent of that amount of tax, subject to a maximum increased amount of €12,695, where the return of income is delivered before the expiry of 2 months from the specified return date for the chargeable period, and

(ii) 10 per cent of that amount of tax, subject to a maximum increased amount of €63,485, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,

and, except where the surcharge arises by virtue of subparagraph (ib) of subsection (1)(b), if the tax contained in the assessment is not the amount of tax as so increased, then, the provisions of the Tax Acts and the Capital Gains Tax Acts (apart from this section), including in particular those provisions relating to the collection and recovery of tax and the payment of interest on unpaid tax, shall apply as if the tax contained in the assessment to tax were the amount of tax as so increased.

(b) In determining the amount of the surcharge, the tax contained in the assessment to tax shall be deemed to be reduced by the aggregate of—

(i) any tax deducted by virtue of any of the provisions of the Tax Acts or the Capital Gains Tax Acts from any income, profits or chargeable gains charged

in the assessment to tax in so far as that tax has not been repaid or is not repayable to the chargeable person and in so far as the tax so deducted may be set off against the tax and contained in the assessment to tax,

(iii) any other amounts which are set off in the assessment to tax against the tax contained in that assessment.

…

Section 949I TCA 1997 – Notice of Appeal.

(1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.

(2) A notice of appeal shall specify—

(a) the name and address of the appellant and, if relevant, of the person acting under the appellant's authority in relation to the appeal,

(b) in the case of an appellant who is an individual, his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) or, in the case of any other person, whichever of the numbers in respect of the person specified in paragraphs (b) and (c) of the definition of "tax reference number" in section 885(1) is appropriate,

(c) the appealable matter in respect of which the appeal is being made,

(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and

(e) any other matters that, for the time being, are stipulated by the Appeal Commissioners for the purposes of this subsection.

(3) Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied.

(4) Where an appeal is a late appeal, the notice of appeal shall state the reason the appellant was prevented from making the appeal within the period specified by the Acts for doing so.

(5) A copy of the notification that was received from the Revenue Commissioners (that is to say, the notification in respect of the matters the subject of the appeal) shall be appended to a notice of appeal.

(6) A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.

State Property Act, 1954 – Section 28

(1) In this section "body corporate" does not include a body corporate dissolved by an enactment wherein it is provided that the property of that body corporate shall, on such dissolution, vest in some other person.

(2) Where a body corporate is dissolved, either before, on or after the operative date, the following provisions shall apply and have effect and, in the case of a body corporate dissolved before the operative date, be deemed to have applied and to have had effect as from such dissolution, that is to say:—

(a) all land which was vested in or held in trust for such body corporate immediately before its dissolution (other than land held by such body corporate upon trust for another person) shall, immediately upon such dissolution, become and be the property of the State, subject however to any incumbrances or charges affecting the land immediately before such dissolution,

(b) all personal property (excluding chattels real but including choses-in-action) which is vested in or held in trust for such body corporate immediately before its dissolution (other than personal property held by such body corporate upon trust for another person) shall, immediately upon such dissolution become and be State property.

(3) Subsection (2) of this section shall have effect subject and without prejudice to any order made by a court under section 223 or subsection (6) of section 242 of the Companies (Consolidation) Act, 1908.

Documentation Presented to the Commission

26. Included within the documentation presented to the Commission was the following:

26.1 Print-outs from the Respondent's system which showed RCT payments received by [redacted] Ltd. for the period 12th January 2017 to 8th December 2021. These showed that RCT at the rate of 20% was applied to those payments.

26.2 A print-out from the Companies Registration Office dated 4 h April 2023. This showed that [redacted] Ltd. was dissolved on [redacted] 2017 and it listed the Appellant as the sole director of that company.

Submissions

Appellant

27. The Appellant submitted that as [redacted] Ltd. ("the company") ceased to trade and exist on [redacted] 2017 then in accordance with section 27 (3) TCA 1997, no new accounting period could commence for the company as it was dissolved. The Appellant further submitted that the effect of this position was that the company could not trade after that date and hence, could not incur tax liabilities after that date.

28. The Appellant referred to a leading textbook, entitled "Irish Income Tax 2021[3]". At page 257 of that publication, when discussing zero rating for RCT, the author states:

> "*It is difficult to see how a company which has been wound up or otherwise dissolved can be said to be a 'person' at all or how it can be meaningfully said to be tax compliant*."

29. The Appellant further referred to an extract[4] from the Companies Registration Office website which states:

> "*The protection of limited liability is lost from that date [date of dissolution] and if the business formerly carried on by the company is continued, the owners are trading in their personal capacity*".

30. The Appellant stated, following a consideration of the extracts detailed at paragraphs 28 and 29 above, it was evident that the Appellant was now trading in his personal capacity. As such, in accordance with the provisions of section 530 O TCA 1997, the Appellant returned the income received from the date the company was dissolved, 12th April 2017, as his income when completing his self-assessment to income tax.

31. The Appellant submitted while section 530 P (1) TCA 1997 treats the RCT as a payment on account of income tax for the periods in question, as the company was dissolved, those withheld payments, after 12th April 2017, could not be considered to be a payment on account in respect of the company since it no longer existed.

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[3] Irish Income Tax 2021, Tom Maguire, Bloomsbury Professional.

[4] https://www.cro.ie/Portals/0/Leaflets/Leaflet%2028%20v1.3%202014%20Act.pdf at page 1, paragraph 1.1.2.

32. As such, the Appellant submitted as the Appellant had returned the total gross payment received from principal contractors, from the date the company was dissolved to the date of the period under appeal, and was taxed by the Respondent on this income, then it followed that the Appellant was entitled to the benefit of the tax withheld and paid to the Respondent.

33. The Appellant submitted that a failure to allow the Appellant a credit for the RCT paid would amount to double taxation and any court would find that treatment an "absurdity". In support of that submission, the Appellant opened the United Kingdom case of *Barnes v Hely Hutchinson* 22 TC 655 ("*Barnes*") in which Lord Wright stated at page 18:

> "*Whatever the precise scope of the rule against double taxation, it must at least involve that it is the same income, that it is the same (taxpayer) in respect of the same piece of income that is being doubly taxed whether directly or indirectly, and that the double taxation is by British assessment".*

34. The Appellant submitted in line with Lord Wright's "test", that as the income and taxpayer in the Appellant's appeal are the same, then it was evident that a failure to allow the Appellant a credit for the RCT withheld would amount to double taxation which was in contravention of the TCA 1997.

35. In conclusion, the Appellant submitted that as the company was no longer in existence after the date it was dissolved on [redacted] 2017, then it could not trade after that date nor incur RCT in its name after that date. The Appellant submitted that he had properly returned the income after the date the company was dissolved in his own name and been assessed to income tax on those payments. Since, part of that income included the RCT element, and since the company was no longer in existence, the Appellant submitted that a failure to allow those RCT credits as a credit against the associated tax liability would amount to double taxation and be in contravention of the TCA 1997.

36. The Appellant acknowledged that his appeal only related to the year of assessment 2020, but he requested that as the matter under appeal also related to the year of assessments 2017, 2018 and 2019, that any findings of the Commission be extended to those years also.

Respondent

37. The Respondent opened section 530P TCA 1997 which provides:

> "*Where a principal deducts tax from a payment to a subcontractor in accordance with section 530F, such tax shall be treated as a payment on account by the subcontractor.*"

38. The Respondent submitted that the effect of section 530P TCA 1997 is, as the RCT deducted by the Principal Contractors was returned to it under the company's tax registration number, that it could only offset those payments against taxation liabilities incurred by the company after the date those payments were made. As the company did not incur any liabilities, as it was dissolved, the Appellant submitted that those payments were not available for utilisation by the dissolved company.

39. As the company was dissolved and as it had no taxation liabilities to offset the RCT against, the Respondent submitted that this resulted in the dissolved company having an asset in its name (the sum of the withheld RCT). The Respondent submitted in accordance with the provisions of section 28 of the State Property Act 1954, this "asset" became the property of the State and as such, was not available for offset against the Appellant's personal taxation liability.

40. In addition, the Respondent submitted as the Appellant was not entitled to use the tax registration number of the company after the date it was dissolved and/or operate under the dissolved company's name, then these illegal actions prohibited the Appellant from claiming the benefit of the RCT withheld.

41. Further, or in the alternative, the Respondent submitted that there was no provision contained in the TCA 1997 which facilitated the Appellant's request that he was entitled to obtain the benefit of tax withheld in the name of another entity.

42. The Respondent further submitted that the Commission was precluded from adjudicating upon the years 2017, 2018 and 2019 as the Appellant had not included those grounds in his notice of appeal to the Commission.

43. In those circumstances, the Respondent submitted that the Commission should refuse the Appellant's request that the years of assessment 2017, 2018 and 2019 be included in his current appeal and refuse his appeal for the year of assessment 2020.

Material Facts

44. The Commissioner finds the following material facts:-

    44.1 The Appellant was a director of a limited company which was dissolved by the Companies Registration Office on [redacted] 2017.

    44.2 After the company was dissolved, the Appellant continued to trade under the name of the dissolved company and received payments in its name.

44.3 Both the Appellant and the dissolved company operated the same activities. Those activities are considered construction services.

44.4 Where taxpayer's activities are "construction services", any payments made by its "principal contractor" customers must be made under the deduction of tax known as "RCT".

44.5 The rate of RCT applicable for the dissolved company was 20% for the period under appeal.

44.6 Acting in accordance with legislative requirements, the Principal Contractors withheld RCT at the rate of 20% on the payments made to the Appellant who had invoiced them in the name of the dissolved company.

44.7 As a result of the withheld RCT, the Respondent received payment of these amounts from the Principal Contractors under the dissolved company's tax registration number.

44.8 The Appellant retained those sums of money paid by the Principal Contractors, after the deduction of RCT, for his own use and enjoyment.

44.9 The Appellant returned the money he retained and the amount of the RCT withheld by the Principal Contractor on the dissolved company's behalf when he submitted his personal income tax return for 2020.

Analysis

45. The appropriate starting point for 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 *Menolly Homes v The Appeal Commissioners and Anor* [2010] IEHC 49 ("*Menolly Homes*") where Charleton J held at paragraph 22:-

> "*The burden of proof in this appeal process is … 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."*

46. This burden of proof was reiterated in the recent High Court case of *O'Sullivan v Revenue Commissioners* [2021] IEHC 118, where Sanfey J. held at paragraph 90:

> "*…The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate*

documentation to corroborate the taxpayer's position, are solely matters for the taxpayer."

47. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners and ors.* {2020] IEHC 552 ("*Perrigo*") where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

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

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

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

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

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

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

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible."

48. It is the Appellant's position that as he returned the income received by his former company, in his own name and paid income tax on that income, then he should be entitled to the associated available credit for RCT deducted from that income, withheld by the Principal Contractors in the name of the Appellant's former company. The Respondent disputes this position.

49. The Commissioner has considered the Respondent's submissions under section 28 of the State Property Act 1954. However, in applying the principles promulgated in *Perrigo* and in giving those words their "ordinary and plain meaning", as that section only concerns assets vested in the body corporate on the date of dissolution of that body, and as the asset (the withheld RCT) arose after the date the Appellant's company was dissolved, the Commissioner disregards those submissions.

50. As the Appellant's company was dissolved on [redacted] 2017, it follows that it ceased to legally exist with effect from that date. The Commissioner notes from the analysis that the RCT was deducted by the Principal Contractors and remitted to the Respondent under the name of the dissolved company but the physical funds paid by those Principal Contractors were retained by the Appellant for his own use and enjoyment.

51. Section 530 O TCA 1997, which considers the computation under Schedule D of the subcontractor's profit refers to a subcontractor "*who receives a payment from which tax has been deducted in accordance with section 530 F TCA 1997*".

52. As section 530 F TCA 1997, and indeed, the whole of section 530 TCA 1997, refer to the subcontractor as being the same person or entity who receives the payment and the associated RCT deduction, the Commissioner, applying *Perrigo* and giving the words contained within Section 530 TCA 1997 their "ordinary and plain meaning", finds that there is nothing available within those provisions to support the Appellant's position. The Commissioner therefore finds that the RCT deducted by the Principal Contractors in 2020 is not available as a credit against the Appellant's 2020 income tax charge.

53. The Commissioner is reassured of this position in considering *Barnes*, in which Lord Wright referred to the "same income" and the "same taxpayer". As this is not the position in the Appellant's appeal, as the Appellant and his former company are not the "same taxpayer", it follows that no double taxation arises. By extension, this supports the Commissioner's finding that the RCT deducted in the name of the Appellant's company is not available for offset against the Appellant's personal income tax liability.

54. As the Appellant is the person who "received the payment", the provisions of section 18 TCA 1997 apply. This requires that the person receiving the payment shall be charged tax under Schedule D on the annual profits or gains accruing to that person. It therefore follows, as the Appellant received the payments in 2020, then the Respondent is correct in assessing him to income tax on those payments in the tax year 2020.

55. Therefore, the Commissioner is required to refuse the Appellant's appeal, subject to confirming that the tax liability for the year under appeal, 2020, is properly computed.

56. The Commissioner notes that the Appellant returned the gross income (that is the payment received by him and the amount of the RCT deduction) when computing his income tax liability for 2020. As the Appellant did not receive the amount of the RCT and is not entitled to a credit for same, it is evident that he did not receive that portion of the income returned on his income tax return. As the Appellant is only liable to income tax on the amount received by him in 2020, under the provisions of section 18 TCA 1997, it follows that the Appellant has been over-assessed to income tax for that year.

57. Therefore, the Commissioner upholds the Respondent's assessment for 2020 with the variation that the income (and associated taxation charge) be reduced by the amount of the RCT deducted wrongly included within the Appellant's 2020 Income Tax return.

58. As this position most likely persisted in the years of assessment not under appeal, being 2017, 2018, 2019 and 2021, the Commissioner aware that those years are not included in the Appellant's appeal and are therefore outside his remit, can only encourage the parties to agree the tax liabilities for those years of assessment between themselves.

59. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes*, "*the burden of proof …is on the taxpayer"*. As confirmed in that case by Charleton J at paragraph 22:-

> "*This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.*"

60. The burden of proof has not been discharged to satisfy the Commissioner that the income tax liability for 2020 sought by the Respondent is not due.

Determination

61. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant tax is not payable. Therefore, the Respondent's assessment for the year of assessment 2020 in the sum of €7,342.40 is upheld, with the variation that the liability and surcharge is to be reduced with reference to the amount of RCT wrongly included within the Appellant's income for that year.

62. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal.

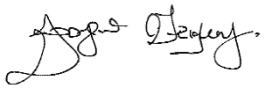
63. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

64. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ (6) of the TCA 1997. This notification under section 949AJ of the 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

65. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Andrew Feighery
Appeal Commissioner
17th October 2013