



31TACD2024

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 determination of the Revenue Commissioners (“the Respondent”) made pursuant to section 485 (24) (a) of the Taxes Consolidation Act 1997 (“TCA 1997”) on 7th July 2021. Within the Respondent’s determination it held that the Appellant was not a “*qualifying person*” under the Covid Relief Support Scheme (“the CRSS”) for the period 13th October 2020 to 13th June 2021 (“the claim period”).
2. During the claim period the Appellant received payments under the CRSS in the amount of €79,929.58.
3. Since 2022, the Commission have adjudicated upon and issued Determinations in respect of a number of CRSS appeals. Those Determinations may be found on the Commission’s website¹.
4. Subject to certain conditions being fulfilled, section 949AN TCA 1997 - “*Appeals raising common or related issues*” - permits the Commission to determine an appeal having regard to a previous Determination issued by the Commission (“the similar appeal”) where the matter under appeal and the similar appeal share “*common or related issues*”.
5. Where those provisions apply, the Commission is required to send a copy of the similar appeal Determination (redacted for privacy) to the Appellant and the Respondent (“the parties”). In addition, the Commission are required to request arguments from the parties, if any, to be received within 21 days after the date of the request, in relation to why the parties, or either of them, would deem it unsatisfactory to have regard to the similar appeal Determination in adjudicating upon the matter under consideration in the parties’ appeal.
6. In accordance with section 949AN TCA 1997, the Commission wrote to the parties and enclosed a copy of a suitable similar Determination of the Commission, 98TACD2022². As neither party submitted any arguments to the Commission objecting to the Appellant’s appeal being determined in the manner proposed, this appeal is determined without a hearing and is therefore based upon the similar appeal Determination and documentation received from both parties, in accordance with the provisions of section 949AN TCA 1997.

¹ <https://www.taxappeals.ie/en/determinations> - 73TCAD2022, 83TACD2022, 85TACD2022, 87TACD2022, 88TACD2022, 98TACD2022, 148TACD2022, 10TACD2023, 13TACD2023, 17TACD2023, 64TACD2023, 130TACD2023, 131TACD2023, 132TACD2023, 149TACD2023.

² <https://www.taxappeals.ie/en/determinations/98tacd2022-crss-covid-relief->

Background

7. The Appellant is a limited liability company having its registered office address at [REDACTED]
[REDACTED]. The Appellant is an event organiser and operator of several exhibition franchises which take place at large multi-purpose venues such as the [REDACTED].
8. The Appellant registered for the CRSS via the Respondent's online service on 5th November 2020. As part of the application process, the Appellant signed a declaration which acknowledged that the Appellant would abide by the terms and conditions of the scheme and undertook to retain all documents relating to the scheme, including the basis of eligibility, for review by the Respondent.
9. On 13th November 2020, the Appellant wrote to the Respondent as follows:

*"I refer to the Covid Restrictions Support Scheme to which our company, [REDACTED]
[REDACTED], have recently applied for support.*

*From the earliest days of the pandemic HSE Coronavirus (COVID-19) guidance to organisers and attendees of mass gatherings and updated government guidance on size and number of event participants has placed significant restrictions on our business, effectively leading to a cancellation of the [REDACTED]
events that we hold in the [REDACTED] periods of each calendar year. These events cannot take place under any level in the level 1 to 5 framework set out by the Government.*

*The events in quarter one 2021 have been cancelled. The company will have close to zero turnover in this current financial year. All of the staff in [REDACTED]
operate from home offices. No meetings can take place with any prospective customers to try to present and pre-sell the events in 2022. We are happy we satisfy the eligibility criteria for the scheme in that:*

- 1. Our business activity is a business activity carried on in a business premises located in a geographical region subject to Covid restrictions. This refers to our home offices and the event locations of the [REDACTED]
[REDACTED]*
- 2. Our business activity is chargeable to tax under Case I of Schedule D.*
- 3. As a consequence of COVID restrictions, customers are prohibited or significantly restricted from accessing the event venues and our home offices.*

Consumer events that are commercially dependent on large numbers of attendees are not possible to organize.

4. The event venues [REDACTED] have been the fixed venues for the [REDACTED] for the past 25 and 5 years respectively. In addition all employees have been operating from at least three separate home offices for the past 15 years.

5. We expect to have close to zero turnover this year down from [REDACTED].

6. We have a current valid tax clearance certificate and have complied with any obligations in relation to accounting for VAT

7. We are still trading and attempting to pre-sell and organize future events which will resume after the Covid restrictions are lifted.

As our business is not seasonal but concentrated on a small number of events that are held over a few days in [REDACTED] but take a full year to sell and organize, we want to be certain that there is no ambiguity around our entitlement as an event organizer and event management company for CRSS support.

Therefore I would be obliged if you would provide confirmation that our company and its business is eligible for support and if not, I would be obliged if you could specifically set out the grounds on which event management companies would be excluded..."

10. The Respondent replied to that correspondence on 18th November 2020 as follows:

"...I note the contents of the attached file and I can confirm that the CRSS registration has been approved for [REDACTED]

The claims portal is also now live on ROS under the eRepayments section..."

11. As noted above, for the periods 13th October 2020 to 13th June 2021, the Appellant received the sum of €79,929.58 in CRSS payments.

12. On 29th June 2021, the Respondent wrote to the Appellant as follows:

"...I refer to your claim for payment under the Covid Restrictions Support Scheme (CRSS) in the period 13/10/20 to 13/06/21.

Section 485 (1) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of the Finance Act 2020) provides the legislative basis for CRSS. Revenue is administering the scheme and has published detailed guidelines on its operation, which are available on its website at www.revenue.ie. These guidelines are based on the terms and

conditions of the scheme which are set out in the legislation and Revenue does not have the flexibility to operate the scheme other than as specified in the legislation.

To qualify under the scheme, a business must meet some fundamental statutory requirements:

a) The business must carry on a trade or trading activities, the profits from which are chargeable to tax under Case I of Schedule D;

b) The trade must be carried on from a business premises that is located in a region subject to restrictions introduced in line with the Government's 'Living with Covid-19 Plan', with the result that the business is required to prohibit or significantly restrict customers from accessing its premises to purchase goods or services;

c) The legislation provides that, for the purposes of the CRSS, a business premises is a building, or other similar fixed physical structure from which a business activity is ordinarily carried on. Mobile premises, or premises which are not permanently fixed in place, do not meet the definition of business premises as specified in the legislation;

d) As a result of Covid-19 restrictions imposed by Government, the applicant must be able to demonstrate that the turnover of the business in the claim period will be no more than 25% of the average turnover of the business in 2019 (or 2020 in the case of a new business);

e) It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or because customers to whom the business supplies goods or services are currently not purchasing these goods/services due to Covid-19 restrictions. To be eligible for the CRSS, a supplier business must meet the eligibility criteria in its own right; the business must be required by the specific terms of Covid restrictions to prohibit or significantly restrict customers from accessing its own business premises, with the result that the business is either required to temporarily close or to operate at a significantly reduced level. [Emphasis added].

Following examination of your eligibility for the CRSS, it has been concluded that you do not appear to have met the qualifying criteria, particularly requirements (b) and (c) above and this has resulted in an overpayment arising.

Accordingly, payments amounting to €79,929.58 made to you in respect of CRSS should be repaid. Repayment can be made by using Revenue's online system, ROS, using the My Services Screen and then selecting 'Tax Payment Declaration' and the Tax Type 'CRSS' on the dropdown menus. If, for any reason, you cannot make the repayment at this time or you require any further clarification, you should contact the Collector-General's Office via MyEnquiries or by phone @ 01 7383663 as soon as possible to discuss options available to you in addressing the overpayment.

If you consider that you do, in fact, meet the eligibility criteria in question, please respond within 10 working days explaining, having regard to the legislation referenced above, on what specific grounds or basis you meet the qualifying criteria and include any relevant documentation to support your application. Subsequently, if further examination of your case does not confirm your eligibility for the CRSS a Determination Notice will issue to you.

The CRSS provisions in Finance Act 2020 include a right to a formal appeal of Revenue's determination that you do not qualify for the scheme. An appeal must be made directly to the Tax Appeals Commission (TAC) within 30 days from the date a Determination Notice issues to you. Information and guidance on how to make an appeal to the TAC is available at www.taxappeals.ie...

13. The Appellant replied to that correspondence as follows on 5th July 2021:

"...In reference to the Covid Restrictions Support Scheme, your letter of 29 June 2021 states that you have concluded that we, [REDACTED], "do not appear to have met the qualifying criteria, particularly requirements (b) and (c)...and this has resulted in an overpayment arising". You then proceed to seek repayment of amounts paid under the scheme.

We are astonished and frightened at having received the letter as we had already taken direct steps in explaining the activity of [REDACTED] to the Revenue Commissioners in advance of drawing any funds under the scheme. Our correspondence, a copy of which is attached, having set out the business description, and how the criteria are met, specifically states that "we want to be certain that there is no ambiguity around our entitlement as an event organizer and event management company for CRSS support". Furthermore, we specifically request that "you would provide confirmation that our company and its business is eligible for support".

The correspondence referred to above was sent via the Revenue's online portal and in direct response, the CRSS Unit noted the letter and confirmed that CRSS

registration had been approved for [REDACTED]. A copy of this correspondence is also attached.

I am astonished that, having so communicated to avoid any uncertainty, and having received that certainty from the CRSS unit itself, that Revenue have now chosen to back track on their original response and some eight months later, place our company in a dangerous and perilous financial circumstance.

After more than 30 years in business, many serious discussions took place back in November 2020 around our company's ability to survive the impact of the pandemic. Given the importance of decisions that were to be taken, we needed certainty if we were to proceed to carry on our trade and without doubt the CRSS unit's confirmation of approval allowed us to take the decision to continue to trade. Your reversal of your decision and demanding repayment places the company now in an ever more perilous financial position. Therefore, I must firstly request that you discuss with your colleagues in the CRSS unit to understand the decision making that let them conclude and confirm that our CRSS funding was approved.

Secondly, I would request that you review your own decision making around requirements (b) and (c) in light of our earlier correspondence attached and as further set out below:

I reiterate that the trade of [REDACTED] was and is carried on from three different home office locations. Our business is the sale of exhibition space. This is a complicated sale and under normal circumstances involves lengthy and multiple interactions with potential customers; understanding their budget and their exhibition goals. We negotiate on the location of the space they are purchasing and how that fits in with the location of their competitors and how it fits into the overall exhibition plan. Up to this point, most of that activity takes place face to face, whether to an international customer or a domestic customer. It is true that some repeat customers may not require as many direct face to face meetings but this interaction is our lifeblood and vital to the sales process. This activity, which is what we do from one end of the year to the other, could not take place during the pandemic. Customers could not travel to our offices to progress sales discussions. If we were not selling our 2021 exhibitions because they were cancelled, we were certainly expecting to sell our 2022 shows. Our product may be an exhibition over a short number of days but our business is the selling of exhibition space over the course of a year in advance. We have no doubt but that the restrictions introduced in line with the Government's 'Living with Covid-19

Plan', resulted in our business being required to prohibit or significantly restrict customers from accessing its premises to purchase goods or services and this meant our selling activity could not take place.

In relation to c) again an understanding that our business is the selling of exhibition space over the course of a year or more in advance and not simply the holding of an event and charging admittance should explain why our fixed home offices, from which this selling and client interaction occurs, satisfies the fixed physical structure requirement as specified in the legislation. The sale of admittance to the exhibitions themselves is incidental to our business and represents no more than ██████ of our sales income.

..., I now respectfully ask you to revisit your conclusions on our eligibility, which reverses your colleague's earlier confirmation, in light of the further descriptions above on the nature of our company. I am confident that with this greater understanding of our business, you will be in a position once again to confirm our eligibility for CRSS support..." [Emphasis added].

14. On 7^h July 2021, the Respondent issued its determination to the Appellant re-confirming its position that it deemed the Appellant was ineligible for payments under the CRSS.
15. The Appellant who not in agreement with the Respondent's determination, lodged its appeal with the Commission on 21st July 2021.

Submissions

Appellant

16. The Appellant submitted that it was in business for over 30 years and during that period had always operated its business as an ethical business operator and compliant taxpayer.
17. The Appellant submitted that it had sought assurance from the Respondent before it registered for and received payments under the CRSS. The Appellant submitted when it received that assurance from the Respondent in the form of the Respondent's letter of the 18th November 2020, in which it stated that the Appellant's CRSS registration was approved, it took the decision to remain open for business.
18. The Appellant stated that it did not believe it was envisaged as part of the operation of the CRSS that eligibility under the scheme could be opined on more than once by the Respondent and as such was shocked to receive the Respondent's letter of 29th June 2021 in which it sought to re-examine the Appellant's eligibility for CRSS payments.

19. The Appellant submitted that it was clear to it that the response from the Respondent on 18th November 2020 was the Respondent's first determination on the matter and that the second communication from the Respondent on 29th June 2021 was its second such determination. The Appellant further submitted for the Respondent to disregard its November 2020 communication as a determination notice would suggest that the Respondent failed to deal with an important taxpayer request for over seven months.
20. The Appellant submitted that it suffered the following adverse effects as a result of the revised determination received by the Respondent on 29th June 2021:
 - 20.1. It had availed of support through the claims portal for CRSS payments and those funds were applied in keeping its business operational.
 - 20.2. Repayment of those funds "*would now place an almost intolerable burden on [the Appellant] to begin repayments of CRSS as soon as possible and CRSS debt would not appear to qualify for the Debt Warehousing Scheme.*"
21. The Appellant submitted that the actions of the Respondent is contrary to its Customer Service Charter objective to administer the law consistently and the Respondent must be cognizant of the fact that a taxpayer must be able to make business decisions in reliance of confirmations already received from it. In those circumstances, the Appellant submitted that its appeal ought to be allowed.
22. In the event of the Commission finding that it was not eligible for support under the CRSS, the Appellant submitted that the Commission should set aside the second determination issued by the Respondent in June 2021. The effect of that decision, the Appellant submitted, would mean that it would only be denied CRSS payments after the claim dates and it would be entitled to retain the CRSS payments it had received. The Appellant submitted that a failure of the Commission to make this finding would prejudice every taxpayer's interaction with the Tax Authorities, would go against tax practice and most likely contravene the principles of natural justice subsumed in the constitution. The Appellant concluded its submissions by stating:

"A taxpayer must be able to rely on, and the Revenue Commissioners must be bound by, the Revenue Commissioners own written communications."

Respondent

23. The Respondent submitted the burden of proof was on the Appellant to demonstrate, on the balance of probabilities, the Respondent's determination was incorrect and that the Appellant was, in fact, entitled to the CRSS payments the subject matter of this appeal.

24. In support of this position, the Respondent opened the case of *Menolly Homes Ltd v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, (“*Menolly Homes*”) where Charleton J held:

“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.”

25. The Respondent stated that section 485 TCA 1997 was inserted by section 11 of the Finance Act 2020 and came into effect on 13 October 2020. The Respondent further stated that the objective of the CRSS, is outlined in section 484 TCA, which it states “*is to provide a necessary stimulus to the economy to mitigate the financial consequences of the Covid-19 pandemic.*”

26. The Respondent opened section 485(4) (b) TCA 1997 which it submitted outlines the criteria for a person to be deemed eligible for receipt of CRSS payments. The Respondent submitted that such a person must carry on a relevant business activity whose trade has been disrupted because of the:

“applicable business restrictions provisions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of the person is carried on ...”

27. The Respondent further submitted an intrinsic element of section 485 (4) (b) TCA 1997 is that it assumed that customers visited the business premises to purchase goods or services and these goods or services were provided at the business premises. The Respondent submitted it is clear that the Covid pandemic has had an impact on many businesses and resulted in many knock on effects such as in person meetings being moved to online. However, the Respondent submitted to be eligible for the CRSS, targeted restrictions must apply to a relevant business activity so that customers are prohibited or significantly restricted from accessing the applicant’s business premises.

28. The Respondent acknowledged that there is no doubt that the reduction of capacity at large events as a result of Covid restrictions had a negative impact on the Appellant’s ability to organise trade shows or exhibitions at event locations such [REDACTED]

[REDACTED] However, the Respondent submitted that as the Appellant’s business activities were not operated from these arenas but rather from its registered business address and two other personal dwellings, this did not satisfy the legislative requirements to enable the Appellant avail of CRSS payments. The

Respondent further submitted that the inability to host in person meetings or the signing of contracts was not a significant disruption that rendered the Appellant unable to conduct its business activity at its business premises entirely. Given this position, the Respondent submitted that the Appellant does not satisfy this eligibility criteria as it is not a public facing business whereby its customers are required to attend the business premises to avail of the Appellant's services.

29. The Respondent opened part 4.1.4 of its guidelines³, which it stated provides a helpful insight into why CRSS was not available to the Appellant. It states:

"Where a person is carrying on a business activity which is not ordinarily carried on from a business premises, as defined for the purposes of the scheme, then even if all other criterial are met, that person will not be entitled to make a claim under CRSS."

[Emphasis added]

30. The Respondent further opened section 4.2.4 of its guidelines which it stated provides an insightful example of why the Appellant's business activities were deemed ineligible for support. It states:

"StockUp Limited is a wholesaler to the catering and restaurant industry. The company operates from a premises in Clones, Co. Monaghan and delivers to customers nationwide. Under the restrictions in place across the country, many of the customers in the restaurant trade have cancelled their upcoming orders. While StockUp Limited has spotted an opportunity for additional business in the delivery and take-away sector, the company is experiencing a significant drop in turnover in the interim.

Whilst StockUp Limited has experienced a reduction in turnover as a result of Government restrictions impacting its customers, the business itself, is not subject to restrictions prohibiting or restriction customers to its business premises. Therefore, it does not meet the eligibility criteria."

31. The Respondent submitted in applying the above example to the facts of the Appellant's appeal, it was a requirement that the Appellant must meet the relevant business criteria for CRSS in its own right. Thus, while the operators of the venues used by the Appellant for its exhibitions and trade shows may have been eligible for CRSS, the Respondent

³ Covid Restrictions Support Scheme – Guidelines on the operation of the Covid Restrictions Support Scheme - <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

submitted that as the Appellant did not operate its business activities from these premises, then it failed in its own right to qualify for CRSS payments.

32. Further or in the alternative, the Respondent submitted that the CRSS is not a tax exemption or a relief but rather a temporary financial assistance measure for eligible persons. The Respondent submitted that this is an important distinction when considering the context of the CRSS and interpreting section 485 TCA 1997. The Respondent further submitted that section 485 TCA 1997 should not be interpreted in a manner so as to widen the scope of eligibility that was not completed by the legislature as held by Kennedy C.J. in *Revenue Commissioners v Doorley* [1933] I.R. 750.
33. The Respondent stated that its position was that no doubt or ambiguity arises when interpreting section 485 TCA 1997. However, in the event that the Commission found that there was, the Respondent submitted that the legislature did not envision business entities undertaking the Appellant's business activities (or other similar type businesses activities) would be eligible for inclusion on the CRSS.
34. The Respondent explained that the legislature created a separate and distinct scheme to provide financial support to businesses who conducted the Appellant's business type activities or similar. The Respondent continued that the Event Sector Covid Support Scheme⁴ ("ESCSS") was established for businesses alike that of the Appellant, who organise events and were considered ineligible for CRSS as they did not satisfy the business premises criteria.
35. The Respondent submitted that the scheme was open to small and medium enterprises (SMEs) who provided services to the events industry and expressly included event promoters, event management, conference organisers, security and suppliers of sound, lighting and stage equipment.
36. The Respondent further submitted In order to be eligible for the ESCSS, a business must meet two key criteria, namely it must be ineligible for support under the CRSS and not in receipt of CRSS payments⁵.

⁴ The ESCSS was an initiative of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. This scheme was announced on 15 July 2021 by An Tánaiste and Minister Martin. The purpose of this scheme was to assist "*those supplying services in the events sector to make a contribution to the overheads of businesses that have been significantly negatively affected by Covid restrictions.*" Source - gov.ie - Events Sector Covid Support Scheme (www.gov.ie)

⁵ This condition is expressly confirmed on the gov.ie website. It states under "How to Qualify" – "Businesses that are not eligible for, and are not getting, the CRSS are eligible to apply. <https://www.gov.ie/en/service/bbf9a-events-sector-covid-support-scheme/>

37. Despite being in receipt of CRSS payments, the Respondent stated that the Appellant had submitted a successful application for grant assistance under the ESCSS and received the sum of €75,000 under that scheme.
38. As the Appellant had received financial assistance under the ESCSS, and as payments under that scheme were conditional on the Appellant being ineligible for payments under the separate CRSS, the Respondent submitted that this confirmed its position that the Appellant's business activities were not within the contemplation of the legislature when section 485 TCA 1997 was drafted and hence the Appellant's appeal could not succeed.

Material Facts

39. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent, and are required eligibility conditions for inclusion on the CRSS:
 - 39.1. The Appellant's business activities commenced before 26^h December 2019.
 - 39.2. The Appellant's turnover was less than 25% of the average weekly turnover level of that in 2019.
 - 39.3. The Appellant's business profits are chargeable to taxation under Schedule D, Case 1.
 - 39.4. The Appellant intended to (and subsequently did) carry on business activities after the "Covid-19 restrictions" were lifted.
 - 39.5. The Appellant had complied with all their VAT registration and return obligations.
 - 39.6. The Appellant held a tax clearance certificate at all material times.
 - 39.7. The Appellant applied for payments under the CRSS and received payments under that scheme in the sum of €79,929.58 for the period 13th October 2020 to 13th June 2021.
 - 39.8. The Respondent issued a determination notice to the Appellant on 7th July 2021. Within that notice the Respondent sought the return of payments made to the Appellant under the CRSS as it was deemed ineligible for inclusion on that scheme.
40. In addition, the Commissioner found the following material facts from the parties submissions:

- 40.1. The Appellant is an event organiser and operator of several exhibition franchises which take place at large multi-purpose venues such as the [REDACTED]
- 40.2. The Appellant submits that its business activities take place at those venues and at three home offices.
- 40.3. No evidence was provided to the Commission in relation to what activities occurred at either of the event venues or in particular at the home offices.
- 40.4. No evidence was provided to the Commission which explained why the Appellant's customers were required to attend its staff's home offices.
- 40.5. The Appellant registered for Covid-supports under an alternative assistance scheme known as "ESCSS".
- 40.6. The Appellant received payment of €75,000 under the ESCSS.
- 40.7. In order to be eligible for payments under the ESCSS, an applicant must be ineligible for support under the CRSS.

Analysis

41. The Commissioner notes from the submissions that, for the periods under appeal, the Appellant's business activities were wholly conducted from the Appellant's staff's home offices as the event venues were required to close during those periods. The Commissioner further notes that no evidence was presented to the Commission which provided reasons why the Appellant's customers were required to attend those offices. As no such reasons were provided and as the Commissioner considers that the activities of the Appellant could have been conducted by telephone or zoom call, the Commissioner finds that the Appellant not required to prohibit or significantly restrict its customers from attending its business premises.
42. In coming to that finding, the Commissioner is aware that the events which the Appellant sold were cancelled owing to Covid restrictions and as such it most likely had no or limited events to sell, apart from the anticipated 2022 events. While the cancellation of the 2021 events caused a serious of complete decline of the Appellant's turnover, this does not satisfy the provisions of section 485 (1) TCA 1997 which requires the Appellant itself to have been "*required by the provisions of Covid restrictions to restrict members of the public from having access to the business premises in which the relevant business activity is carried on...*"

43. In the similar appeal, the Appellant operated a seasonal business and its business premises consisted of a warehouse and a marquee set up on land owned by public bodies. As in the Appellant's appeal, the central issue to be determined within the similar appeal was whether the Appellant was required as a result of applicable business restriction provisions to prohibit, or significantly restrict, members of the public from having access to its business premises which the Commissioner noted is a prerequisite for CRSS eligibility under section 485 TCA 1997.
44. Within the similar appeal, the Commissioner noted that the CRSS was introduced by the Government to provide "*targeted support for businesses directly impacted by public health restrictions with the result that they had to temporarily close or significantly restrict access to their premises*". The Commissioner further noted that as the scheme requires the business to have a premises to be deemed eligible for CRSS payments, it is evident that the intent of the legislator was to assist businesses which had a business premises defray the cost (rent payments, standing charges for utilities, etc.) of maintaining or retaining those premises which were either required to close or significantly restrict customers from accessing those premises
45. In coming to his findings in that appeal, the Commissioner examined the "complicated" sections of section 485 TCA 1997 utilising the principles of statutory interpretation in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* ([2020] IEHC 552).
46. In so doing, the Commissioner examined a number of definitions contained within section 485 (1) TCA 1997 and the Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 10) Regulations 2020. Following that analysis, the Commissioner noted that the key phrase contained within section 485 (1) TCA 1997 was that the business was "*required by the provisions of Covid restrictions...*" to have been required to prohibit or significantly restrict members of the public from having access to the **business premises** [emphasis added]. As the Appellant in the similar appeal operated its business from a warehouse and a marquee, the Commissioner held that it did not have a business premises which it was required to prohibit or significantly restrict members of the public from having access to.

47. In considering the implications of a business not being required to restrict members of the public from having access to its business premises, the Commissioner referred to paragraph 4.2.4 of the Respondent's CRSS guidelines⁶ which states:

“What if a business is not prohibited or significantly restricted from allowing customers to access its business premises but its customers base has significantly reduced because of Covid-19?”

The business must meet the requirement that it ordinarily operates from a fixed business premises and, under the specific terms of the Covid restrictions announced by the Government, customers of the business are prohibited, or significantly restricted, from accessing those business premises....”

48. As the Commissioner held in the similar appeal, that the Appellant was not required to prohibit or significantly restrict members of the public from accessing its business premises under the specific terms of Covid restrictions, the Commissioner found that the Appellant was not entitled to avail of the provisions of section 485 TCA 1997 and hence was ineligible for payments under the CRSS. It therefore follows that as the Commissioner has also determined that the Appellant in its appeal was not required to prohibit or significantly restrict members from accessing its business premises, then the Commissioner is required to find that the Appellant was ineligible to receive payments under the CRSS.
49. As in the similar appeal, where a company receives payments under the CRSS and it subsequently transpires that the claim was not one permitted under section 485 TCA 1997, the provisions of section 485 (17) (a) (ii) and section 15 TCA 1997 apply.
50. In a like manner to the similar appeal, the Appellant is required to repay the Respondent, the amount of CRSS payments it received, €79,929.58 without unreasonable delay in accordance with the provisions of section 485 (17) TCA 1997. Failing which, the Respondent is authorised in accordance with section 485 (15) (a) TCA 1997 to raise an assessment against the Appellant under Schedule D, Case IV for an amount of €319,718, which represents four times the amount of ACTE received by the Appellant in error.
51. The Commissioner notes the Appellant's comments that it received payments under the CRSS despite informing the Respondent at the outset of its business activities. While this is regrettable it is somewhat undermined by the Appellant's subsequent enrolment on and receipt of funds of a comparable amount to that received under the CRSS, from the

⁶ <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

ESCSS, when it knew or ought to have known that it was ineligible for receipt of such funds owing to its inclusion on and receipt of funds from the CRSS.

52. Furthermore, in considering the Appellant's submission that the Respondent issued contrary decisions on the Appellant's entitlement to CRSS and as such, the Commission should set aside the Respondent's second submission, the Commissioner notes that registration for the CRSS was done on a self-assessment basis which required the Appellant to confirm based upon, the applicable legislation and applicable guidelines that it was eligible for registration under the CRSS. The Commissioner further notes at the time it completed its registration, the Covid pandemic was at its height, which had an obvious effect on the Respondent's operations and its ability to effectively review the volume of CRSS registrations received. For those reasons, the Commissioner is unable to consider that submission.
53. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes*, "*the burden of proof is...on the taxpayer.*" The Commissioner finds that the Appellant has not discharged the burden of proof in this appeal and finds that the Appellant has not shown that it was entitled to avail of the provisions of section 485 TCA 1997.

Determination

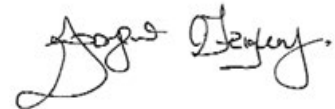
54. For the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in demonstrating its eligibility for inclusion in the CRSS. Accordingly, the Appellant is required to repay to the Respondent the sum of €79,929.58 representing the ACTE sums received by it in error without "unreasonable delay". Failing this, the Respondent is authorised to raise an assessment to tax under Schedule D, Case IV, against the Appellant in the sum of €319,718 which represents four times the amount of ACTE received by the Appellant in error.
55. It is understandable that the Appellant and its director may well be disappointed with the outcome of his appeal but the Commissioner has no discretion to deviate from the legislation.
56. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Notification

57. 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

58. 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

13th December 2023