



32TACD2024

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 3rd August 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 1st December 2020 to 5th June 2021 (“the claim period”).
2. During the claim period the Appellant received payments under the CRSS in the amount of €4,522.56.
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 engaged in the trade of providing sporting activities including the [REDACTED] and has its registered offices at [REDACTED].

8. On 16th November 2020, the Appellant registered for the CRSS. Between 1st December 2020 and 5^h June 2021, the Appellant claimed the amount of €4,522.56 in payments under the CRSS.

9. On 24th June 2021, the Respondent wrote to the Appellant's agent as follows:

"On further review of your client's registration under the Covid Restriction Support Scheme I wish to inform you that it appears that the business may not be eligible under the terms of the scheme. To enable me to review further I require the following information.

1. The exact nature of the business.

2. Is the business carried on in a business premises?

3. Does the business have a Customer facing premises i.e. Do customers normally attend the premises?

Eligibility criteria for this scheme states that your client must have a business premises from which the trade is conducted and access to this premises must be restricted under Government guidelines..."

10. By reply dated the 28th June 2021, the Appellant's agent replied as follows:

"...

1. The main activities are providing sporting activities including [REDACTED] [REDACTED] they have their own [REDACTED] to accommodate Individuals and groups.

2. They have a business premises including a reception area, office, changing rooms and toilets where the customers check in at reception to get ready for example [REDACTED] [REDACTED].

3. Yes all customers have (sic) report to reception and sign in."

11. By reply dated the 2nd July 2021, the Appellant was advised by the Respondent it appeared that it had failed to satisfy the qualifying criteria in two respects, specifically:

“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...

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].

12. Within that correspondence, the Respondent further stated:

“Accordingly, payments amounting to €4,522.56 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. On the 22nd July 2021, the Appellant’s agent advised following a review of the Respondents CRSS Guidance Notes, specifically in relation to outdoor activities, the

Appellant conceded that it did not qualify for CRSS payments. The Appellant's agent stated that while the amount of CRSS payments received, €4,522.56, would be repaid, the Appellant's position was that its business operated from a fixed premises. On the same date, the Appellant repaid the CRSS payments it had received and this was acknowledged by the Respondent as such.

14. Subsequently, on 30th July 2021, the Appellant's agent wrote to the Respondent as follows:

"Further to our previous correspondence, our client consider in fact they meet the eligibility criteria in question in reference to your letter 02/07/2021 particularly requirements (C). The Company [REDACTED] operates from a fixed premises. (E) The company had to close down under Level 5 Restrictions for the period 01 December 2020 to 05 June 2021.

Our Client wants a Determination Notice issued to the Company in order to bring an appeal to the Tax Appeals Commission (TAC). The company's trading has being severely impacted due to the Level 5 Covid-19 Restrictions..."

15. On 3rd August 2021, the Respondent issued its determination to the Appellant in which it stated that it deemed the Appellant was ineligible for payments under the CRSS as it did not operate its business activities from a business premises as defined.
16. The Appellant who was not in agreement with the Respondent's determination, lodged its appeal with the Commission on 23rd August 2021.

Documentation submitted to the Commission

17. In support of its appeal, the Appellant submitted the following documentation:

- 17.1. A handwritten note from the Appellant director to the Appellant's agent. This stated:

"... Point 4, about the [REDACTED]. We do have [REDACTED] [REDACTED] Tea and coffee along with soft drinks are provided on request..."

- 1. We are operating from a premises that we pay rates to [REDACTED] County Council. Our rates number is [REDACTED] (please provide proof of same in appeal). We also had to apply for planning permission for the premises in order to operate our business.*

2. *Our business could not operate without an indoor premises.*
 - (a) *Customers are booked in. They receive instruction/guidelines regarding the [REDACTED]*
 - (b) *Safety clothing and equipment is provided.*
 - (c) *Changing facilities are provided.*
 - (d) *Toilet facilities are provided.*
 - (e) *Washing facilities are provided.*

All indoors. As I understand photos have been submitted to prove all of the above.
3. *All our clothing, equipment is stored indoors – it must be cleaned and aired and kept dry.*
4. *We also run a [REDACTED] which provides tea, coffee, soft drinks and snacks.*
5. *Picnic benches have also been provided for people to enjoy their food outdoors.*
6. *We have until the 3rd August to appeal the decision. However the money, almost €5,000 was removed from our account the beginning of August.”*

17.2. The referred to photographs of the Appellant’s premises which showed:

- 17.2.1. The equipment storage area. This displayed a number of helmets and gloves on racking around the room.
- 17.2.2. The outer doors of the male and female toilet area.
- 17.2.3. The Reception area. This showed a large reception desk with a sink area to the rear, CCTV monitors and storage presses. There was one guest chair situated in the photograph.
- 17.2.4. A second shot of the Reception area. This showed a large sofa adjacent to the reception desk and a countertop for completion of documents.
- 17.2.5. A photograph of the exterior of an internal door. Affixed to this door was three signs marked “Toilet”, “Changing Room” and “Equipment Locker”.
- 17.2.6. The exterior of the building. The building was made of concrete with a metal clad roof and displayed the name of the Appellant’s business on it.

Submissions

Appellant

18. The Appellant submitted that it fulfilled the full eligibility criteria for the CRSS but stated that the Respondent disagreed that it fulfilled one of the requisite conditions. The Appellant stated that this condition was that the Respondent was of the opinion that the Appellant did not operate its business from a business premises, as defined.
19. The Appellant submitted as it was required to get planning permission for its business premises, paid business rates on those premises and as the premises were made primarily of concrete and as such, a fixed premises, then it was evident that part of its business activities were conducted from this premises.
20. The Appellant stated that it maintained a website which detailed the range of activities it provided and it encouraged the Commissioner to review same to gain an understanding of its business activities. The Appellant acknowledged an element of its provided activities were conducted outdoors but it submitted that as it required a business premises for essential parts of its business activities, such as the facilities for customers to check-in, receive essential instruction and change into [REDACTED], then its outdoor business activities could not take place without the use of its premises.
21. The Appellant submitted in addition to the provision of [REDACTED] activities, it also operates a [REDACTED] which provides tea, coffee, soft drinks and snacks. In addition, the Appellant submitted that it had a fridge in the reception area, along with a counter top and customers could purchase items there to enjoy on the provided outdoor picnic benches.
22. The Appellant further submitted that it had been treated unfairly as it applied for CRSS registration on 16th November 2020 in good faith and received payments under the scheme for the period 1st December 2020 and 5th June 2021. As the Respondent did not query the Appellant's eligibility under the CRSS until 24th June 2021, the Appellant submitted that this prohibited it from applying for inclusion on a separate scheme of assistance administered by Fáilte Ireland known as the "Tourism Business Continuity Scheme"³ ("TBCS").

³The Tourism Business Continuity Scheme was a programme of funding designed to support strategic tourism businesses survive through the pandemic and help drive the recovery of tourism post Covid-19. It provided grants to eligible tourism businesses who suffered a 75% plus decline in turnover and the grant was calculated based upon 9/12ths of 10% of the applicant's 2019 turnover – source: <https://www.failteireland.ie/Identify-Available-Funding/Tourism-Business-Continuity-Scheme.aspx>

23. The Appellant explained that the closing date for applications on the TBCS was 25th June 2021 and a condition for eligibility on that scheme was that the applicant was required to have been ineligible for support under the CRSS. As such, the Appellant submitted as the Respondent only informed it that it was ineligible for CRSS payments the day prior to the TBSC closing, that this prejudiced the Appellant's timely registration under the TBCS. The Appellant further stated that it had submitted a claim after the deadline date but was advised by Fáilte Ireland that its application could not succeed as it was made out of time.
24. Given its ineligibility on the TBCS, which the Appellant submitted was caused by the Respondent's untimely correspondence in which it denied eligibility for CRSS payments, the Appellant submitted that the Commission should allow its appeal as to deny same would be unfair in all the circumstances.

Respondent

25. 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.
26. 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."

27. 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.*"
28. 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 ...”

29. The Respondent advised that a “business activity” was defined by section 485 (1) TCA 1997 as:

“... in relation to a person carrying on a trade either solely or in partnership, means –

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

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

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

30. The Respondent further opened the following definitions contained within section 485 (1) TCA 1997 -

A “business premises” which is defined as:

“in relation to a business activity, [...] a building or other similar fixed physical structure from which a business activity is ordinarily carried on”; and

“Applicable business restrictions” which are defined as:

“shall be construed in the manner provided for in the definition of “Covid restrictions period” in this subsection”; and

“Covid restrictions” which is defined as:

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

“Covid restrictions period” which is defined as:

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

31. The Respondent further submitted that section 485 (4) (b) TCA 1997 applies to a person who carries on a relevant business activity and who:

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

- (I) the relevant business activity of the person is temporarily suspended, or*
- (II) the relevant business activity of the person is disrupted, such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount...”*

32. The Respondent stated that section 485 (5) (f) TCA 1997 states that the conditions referred to in subsection (4) (b) (ii) include that a person would but for the Covid restrictions carry on the business activity:

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

33. The Respondent opened part 4.1.3 of its guidelines⁴, which considers “*What is a business premises?*” It states:

⁴ 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>

“For the purposes of the CRSS, a business premises is the building, or similar fixed physical structure, in 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.

‘Ordinarily carried on’ from a business premises requires that the business activity takes place in the business premises. However, it is accepted that a minor element of the activity may take place outdoors, for example a restaurant with an outdoor seating area connected to, or adjacent to, the restaurant.

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 criteria are met, that person will not be entitled to make a claim under CRSS.

Examples of what would not meet the definition of a business premises for the purposes of CRSS include the following;

[...]

outdoor activities even where customers purchase tickets for the activities in a ticket booth (which is in a building), on the basis that the activity being paid for is carried on outdoors, and not in the ticket booth.

A person carrying on a trade consisting of the operation of an outdoor activity generally does not qualify for CRSS on the basis that the outdoor activity is not ordinarily carried on from a business premises as defined for CRSS purposes. However, where as part of that trade, the person also has a relevant business activity being carried on in a business premises onsite (for example a café in a commercial park, or a shop or restaurant at an outdoor amusement park), that person may qualify for CRSS in respect of the relevant business activity carried on in that business premises, where all qualifying criteria are met (see Section 4.1.4). The following outdoor activities would not be considered to be ordinarily carried on from a business premises:

[...]

Outdoor activity centres, for example paintballing, go karting, zip lining...”

34. 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.”

35. 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.
36. In consideration of the foregoing, the Respondent submitted that it was an essential requirement that the Appellant conducted its activities in a premises as defined. As it did not, and as its provided guidance specifically stated that activities akin to the Appellant’s business activities were ineligible for inclusion on the CRSS, the Respondent submitted that the Appellant’s appeal could not succeed.
37. The Respondent submitted while an element of the Appellant’s activities requires the use of an indoor premises and therefore a ‘building’ or similar physical structure, plays some role in its business, the service availed of by the Appellant’s customers is conducted outdoors and as such does not take place within a building or other similar fixed structure.
38. Furthermore, the Respondent submitted that while the Appellant asserts that it operates a [REDACTED] as it had not provided any evidence to the Commission which demonstrated that activity was conducted indoors, then the Commission should determine that element of the business was also not conducted in a “building or other similar fixed structure” and as with the Appellant’s main business find that it was ineligible for CRSS payments for the periods under appeal.

Material Facts

39. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent, and are required eligibility conditions for inclusion on the CRSS:

39.1. The Appellant’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 €4,522.56 for the period 1st December 2020 to 5^h June 2021. The Appellant subsequently repaid this sum to the Respondent on 22nd July 2021.
 - 39.8. The Respondent issued a determination notice to the Appellant on 3rd August 2021. Within that notice the Respondent sought to retain the payments made to the Appellant under the CRSS, and subsequently refunded, 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 engaged in the trade of providing sporting activities [REDACTED]
[REDACTED]
 - 40.2. The Appellant further states that it also runs a [REDACTED] which provides tea, coffee, soft drinks and snacks.
 - 40.3. The Appellant provides picnic benches for its customers to enjoy their food outdoors.
 - 40.4. The Appellant maintains a website which details its provided business activities.
 - 40.5. The Commission were provided with a number of photographs, which establish that:
 - 40.5.1. The Appellant's business premises are a "physical fixed structure".
 - 40.5.2. An element of its provided trading activities necessitate the use of those premises.

Analysis

41. The Commissioner notes from the Appellant's website that in addition to the provision of [REDACTED], the Appellant also provides [REDACTED] activities. The Commissioner further notes that the Appellant's [REDACTED] on its website are described as "an exhilarating outdoor experience". Owing to the nature of these activities, the Commissioner finds that the [REDACTED] and the [REDACTED], by definition, and the Appellant's own admission, are conducted outdoors and as such are not conducted in a building or similar physical fixed structure.
42. While elements of the relevant activities provided to the Appellant's customers are conducted indoors, such as the initial check-in and safety demonstration, the Commissioner finds that these component parts of the Appellant's main activities are merely incidental to the provision of the actual service provided i.e. [REDACTED].
[REDACTED] The Commissioner is reassured in this finding in noting from the Respondent's provided CRSS guidelines (see paragraph 33 above), that in polar, where a minor element on an applicant's business activity may take place outdoors, as in the provided example of a restaurant with a connected or adjacent outdoor seating area, that component part of the business activity is disregarded in assessing the applicant's eligibility for CRSS registration.
43. The Commissioner further notes from the Appellant's submissions that it asserts that it also carries on an element of its trade as [REDACTED]. However, as the provided photographs do not demonstrate any evidence of this trade, and in the event that such a service did exist, the Commissioner finds from the Appellant's own submissions that any food or beverage was consumed outdoors by the Appellant's customers at the provided picnic tables. Given, this position, the Commissioner further finds that in the event that the Appellant did provide a [REDACTED] to its customers, as that activity was conducted outdoors, that aspect of the Appellant's trade was not conducted from a building or other physical fixed structure.
44. 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.

45. 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”*.
46. 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 promulgated in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* ([2020] IEHC 552).
47. 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.
48. 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 guidelines⁵ 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....”*
49. 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

⁵ <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

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.

50. 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) apply.
51. In a like manner to the similar appeal, the Appellant is required to repay the Respondent, the amount of CRSS payments it received, €4,522.56 without unreasonable delay in accordance with the provisions of section 485 (17) TCA 1997. The Commissioner notes that the Appellant has already discharged this sum to the Respondent in advance of the appeal hearing and therefore the Commissioner finds that the Appellant is not entitled to a refund of these monies paid.
52. The Commissioner notes from the Appellant's submissions it alleges that it was unable to apply for alternative Covid supports owing to the timing of the Respondent's decision to deny it's eligibility for CRSS payments. Similar related appeals of the Commission⁶ have addressed the matter of the Commission's jurisdiction as follows in relation to alleged unfairness or other matters not related to the assessment or charge to taxation:

"The jurisdiction of the Commission is generally confined to the determination of the amount of tax owing by a taxpayer based on findings of fact adjudicated by a Commissioner or based on undisputed facts as the case may be as established by a number of Irish cases, including; The State (Whelan) v Smidic [1938] 1 I.R. 12 626, Menolly Homes Ltd. v The Appeal Commissioners [2010] IEHC 49, The State (Calcul International Ltd.) v The Appeal Commissioners III ITR 577 and notably the most recent case between Kenny Lee and the Revenue Commissioners [2021] IECA 18. Hence, the Commissioner is constrained from adjudicating on these matters. However, the Commissioner notes that there is a positive obligation on all public bodies to inform its customers of its complaint procedures. The Appellant Director should note that the Respondent has a complaint and review procedure, details of which are provided on the Respondent's website under the Complaint and Review Procedures Leaflet CS4. The Commissioner assumes the Respondent will contact the Appellant Director to

⁶ See, for example, 73TCAD2022 at paragraph 58 on page 36.

inform him about the complaints procedure and hence the appropriate forum for complaints in relation to service and handling of a case is as set out in the Respondent's leaflet."

53. As unfairness or matters concerning the conduct of parties outside of the appeal hearing are outside the jurisdiction of the Commission, it follows that the Commissioner is unable to consider the Appellant's submissions which state that these matters may have occurred, in particular the circumstances giving rise to its alleged denial of payments under the TBCS.
54. That having said, the Commissioner notes that applications for inclusion on the CRSS, were done on a self-assessment basis at the height of the pandemic when the Respondent was itself coping with the effects of the pandemic which may have included staff resource issues. Furthermore, the Commissioner notes at the time the Appellant submitted its application for CRSS registration, it had access to the Respondent's CRSS guidelines (which had been published on 23rd October 2020) and that these guidelines contained clear examples which confirmed that businesses which conducted business activities similar to the Appellant were ineligible for support under the CRSS, as those business activities were conducted outdoors.
55. 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

56. 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 €4,522.56 representing the ACTE sums received by it in error. As the Appellant has already repaid this sum to the Respondent, the Commissioner therefore finds that the Appellant is not entitled to repayment of this sum, as it was ineligible to receive support under the CRSS.
57. 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. The Appellant was correct to avail of its right of appeal and to check its legal entitlements. The Commissioner hopes the Appellant's business has recovered since the easing of Covid restrictions.

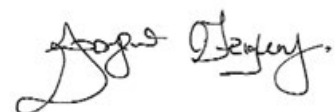
58. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Notification

59. 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

60. 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

14th December 2023