



37TACD2024

Between



Appellant

and

REVENUE COMMISSIONERS


Respondent

Determination

Introduction

1. This is an appeal of the determination of the Revenue Commissioners (“the Respondent”) of 4 October 2021 made pursuant to section 485(24)(a) of the Taxes Consolidation Act 1997 (“the TCA 1997”) that the Appellant was not a “*qualifying person*” under the Covid Relief Support Scheme (“the CRSS”) for the period 1 January – 20 June 2021 (“the claim period”).
2. During the claim period the Appellant received Credit for Trading Expenses (“ACTE”) payments under the CRSS in the amount of €7,531.50.
3. This appeal proceeded by way of oral hearing. In making this determination the Commissioner had the benefit of written and oral submissions made by both parties.

Background

4. The Appellant is a limited liability company which at all times material to the issues arising in this appeal was engaged in the activity of providing training, business consultancy and advisory services to persons operating in the  industry.

5. At all times material to the issues arising in this appeal, the Appellant's registered office was Unit [REDACTED], County [REDACTED] (hereafter "Unit [REDACTED]").
6. The controller and shareholder of the Appellant gave evidence regarding the nature of its business prior to the onset of the Covid-19 pandemic. She said that the majority of its training, consultancy and advisory services were carried out away from [REDACTED] Enterprise Centre, either in the premises belonging to its clients or, in circumstances where there were multiple clients seeking to avail of its services by way of a clinic or workshop, in conference and meeting facilities located in hotels.
7. However, the controller and shareholder also said that a lesser part of the Appellant's business activity was carried out with clients who attended [REDACTED] Enterprise Centre itself. When this occurred, the Appellant would book the meeting room located in the same building as Unit [REDACTED]. The Appellant did not have the right to use the meeting room pursuant to its lease agreement. Rather, it was necessary for the room to be booked and paid for on an ad hoc basis. If it was already booked, the Appellant would have to find an alternative venue from which to provide its services. The controller and shareholder stated that the existence of the meeting room in [REDACTED] Enterprise Centre was of particular use in relation to clients who came from the United Kingdom to avail of the Appellant's services. [REDACTED].
8. The controller and shareholder was clear in her evidence that, with one exception, clients never attended Unit [REDACTED] itself when availing of the services of the Appellant. This was, she said, only a small administrative office and unsuitable for such use.
9. On or about the end of December 2020, nationwide "Level 5" public health restrictions designed to limit the spread of Covid-19 came into force.
10. The Appellant registered for the CRSS through Revenue Online Services ("ROS") on 1 January 2021.
11. Following registration the Appellant submitted 14 claims for ACTE payments in the course of the claim period. The sum received by the Appellant on foot of these claims was €7,531.50 in total. Payment in respect of the last of these claims, relating to the week 14 June – 20 June 2020, was withheld by the Respondent as a consequence of doubts regarding its eligibility as a "qualifying person".
12. From 23 June 2021 – 6 September 2021 the Appellant and the Respondent engaged in correspondence on the subject of the former's eligibility for ACTE payments under the CRSS. In response to correspondence of 25 June 2021, wherein the Respondent

asserted that it could only allow claims relating to business activity conducted from the Appellant's business premises, the agent for the Appellant stated:-

"My client operates from an administrative office at ██████ Enterprise Centre, ██████ Co. ██████. However, clients do not access this office ever. The business includes the provision of training programmes to owners, management and other staff in the ██████ industry. During the pandemic my client was restricted from providing any programmes in person. This has resulted in a 53% reduction in turnover for the period of January to August 2021, compared to the same period of 2019."

13. On 4 October 2021, the Respondent issued a determination notice informing the Appellant that it was not eligible for support under the CRSS on the grounds that it did not consider the Appellant to be carrying on its trade from a "business premises" (i.e. a building from which the person's "business activity is ordinarily carried on")
14. On 19 October 2021 the Appellant appealed this determination to the Tax Appeals Commission ("the Commission").

Legislation and Guidelines

15. Section 485 of the TCA 1997 makes provision for financial support for businesses which suffered a reduction in turnover as a consequence of the imposition of Covid-19 public health measures that had the effect of restricting customer access to the premises from which they carried out their "business activity".
16. Section 485(1) of the TCA 1997 provides the following definitions that are relevant to determining whether the Appellant was entitled as a "qualifying person" to receive this support:-

"'applicable business restriction provisions' shall be construed in the manner provided for in the definition of 'Covid restrictions period' in this subsection

'business activity', in relation to a person carrying "business activity", 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;

‘business premises’, in relation to a business activity, means a building or other fixed physical structure from which a business activity is ordinarily carried on [...]

[...]

‘Covid restrictions’ means 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;

‘Covid restrictions period’, 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 on (referred to in this section as ‘applicable business restrictions provisions’) and is a period which commences on the Covid restrictions period commencement date and ends on the Covid restrictions period end date [...].”

17. Section 485(4)(a) of the TCA 1997 provides:-

“In this section—

“average weekly turnover from the established relevant business activity” means the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;

[...]

“established relevant business activity” means, in relation to a person, a relevant business activity commenced by that person before 26 December 2019;

“new relevant business activity” means, in relation to a person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020;

“relevant business activity”, in relation to a person, means a business activity which is carried on by that person in a business premises located wholly in a relevant geographical region;

“relevant turnover amount” means—

(i) where a person carries on an established relevant business activity, an amount determined by the formula—

$$A \times B$$

where—

A is the average weekly turnover from the established relevant business activity, and

B is the total number of full weeks in the claim period,

or

(ii) where a person carries on a new relevant business activity, an amount determined by the formula—

$$A \times B$$

where—

is the average weekly turnover from the new relevant business activity, and

is the total number of full weeks that comprise the claim period.”

18. Section 485(4)(b) of the TCA 1997 provides:-

“Subject to subsections (5) and (6), this section shall apply to a person who carries on a relevant business activity and who—

(i) 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—

(l) 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, and

(ii) satisfies the conditions specified in subsection (5),

(hereafter referred to in this section as a 'qualifying person')."

19. Included among the conditions which, pursuant to section 485(5) of the TCA 1997, one must fulfil in order to have the potential to be considered a qualifying person is the requirement that the person submit an electronic claim for on ROS containing, inter alia, the "particulars" set out in section 487(14) of the TCA 1997. Among these are:

"[the] address, including Eircode, of the business premises where the business activity is carried on"

[...]

and

"[the] expected percentage reduction in turnover of the qualifying person in respect of the business activity in the claim period [...]"

20. Section 485(24) of the TCA 1997 provides:-

"(a) Where a Revenue officer determines that a person is not a qualifying person within the meaning of subsection (4)(b), the Revenue officer shall notify the person in writing accordingly.

(b) A person aggrieved by a determination under paragraph (a), may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date on the notice of the determination.

(c) Where the Appeal Commissioners determine that a person is a qualifying person within the meaning of subsection (4)(b), the 8 week period specified in subsection (9), shall commence in respect of such a person on the date that determination is issued.

(d) The reference to the Tax Acts in paragraph (a) of the definition of 'Acts' in section 949A shall be read as including a reference to this section."

Submissions

21. What follows is a summary of the submissions made by the parties in writing and during the oral hearing of the appeal.

Appellant

22. The agent for the Appellant submitted that the Respondent had made an error in determining that the Appellant was not a “*qualifying person*” entitled to claim for and receive ACTE payments during the claim period. This error, he said, flowed from the Respondent’s unduly narrow interpretation of the term “*business premises*”. This definition, he submitted, required only that the buildings or fixed structures from which it ordinarily carried on its trade were inaccessible to its clients as a consequence of the Covid-19 public health measures in force over the claim period. The ordinary locations from which the Appellant provided its services were, in first instance, the premises of its clients and hotel conference facilities and, in the second instance, the meeting room located in ██████ Enterprise Centre. As these were all “bricks and mortar” structures, they constituted business premises for the purposes of the statute. It was not a requirement that the Appellant own or otherwise be entitled to possession of these premises in order to be classed as a qualifying person entitled to receive financial support under the CRSS.

Respondent

23. At the outset of her legal argument, counsel for the Respondent submitted that the appeal could be determined by reference to the natural and ordinary meaning of the wording used in section 485 of the TCA 1997, in accordance with the approach to statutory interpretation endorsed by McDonald J at paragraph 74 of *Perrigo Pharma International Activity Company v McNamara & Ors* [2020] IEHC 152.

24. Counsel submitted that it was clear from this wording that to be a qualifying person entitled to support under CRSS one had to “*conduct their business activities ordinarily at their business premises and the public [had to be] prohibited or significantly restricted from accessing that same business premises.*”¹ Moreover, it was necessary for that person to demonstrate that the turnover of the business for the claim period was 25% or less of the “*relevant turnover amount*” [i.e. the average weekly turnover from the period 1 January 2019 – 31 December 2019 multiplied by the total number of weeks comprising the claim period].

25. Counsel for the Respondent submitted that the Appellant’s claim for entitlement to financial support under the CRSS failed on the grounds that it was not a qualifying person. This was so for two reasons. Firstly, because the Appellant’s business premises as evidenced in its application for support submitted on ROS was “Unit ██████” within ██████

¹ Written submissions of the Respondent, paragraph 4.2;

Enterprise Centre. On the evidence of its own controller and shareholder, the Appellant did not supply its consultancy and advisory services to clients attending this particular location. Rather, it did so either away from ██████ Enterprise Centre altogether in its clients' own premises and hotel conference facilities, or from a location within the Enterprise Centre separate from Unit █, namely the meeting room.

26. Counsel argued that the purpose of the CRSS was “to discharge the costs associated with running a business premises such as light, heat, electricity and WiFi [...]” and that it was not intended to allow support to be claimed in respect of businesses who conducted trade from somewhere other than their own premises.² In this regard counsel pointed to the definition of a business premises being a place where the business activity in question was “ordinarily” carried on.
27. Secondly, counsel submitted that the Appellant did not constitute a qualifying person because, on the evidence of the controller and shareholder, there had only been a 53% reduction in turnover for the period January – August 2021 compared to same period in 2019. The version of section 485 of the TCA 1997 in force over the course of the claim period mandated that the turnover not exceed 25% of the relevant turnover amount for the preceding year or, put another way, that its turnover must have reduced by at least 75%. Counsel submitted that, as a consequence, even if the Commissioner were to hold that the definition of a business premises could include the Appellant’s clients’ own premises, hotel conference facilities and/or the meeting room in ██████ Enterprise Centre, the appeal would still fail on the grounds that its turnover was adversely effected during the claim period to an insufficient degree.

Material Facts

28. The facts material to this appeal were as follows:-

- the Appellant is a limited liability that company provides training, business consultancy and advisory services to persons and entities operating in the ██████ industry;
- the Appellant’s registered address is Unit ██████, ██████ Enterprise Park;
- the Appellant provided its services to its clients either in:
 - premises belonging to its clients;
 - hotel conference facilities; and

² Transcript of hearing, page 54.

- in a meeting room located within the same building as Unit [REDACTED] in [REDACTED] Enterprise Park;
- as regards the meeting room in [REDACTED] Enterprise Park, the Appellant paid the proprietor of the Enterprise Park for its use on an ad hoc basis. Use of the meeting room was not a right attaching to the Appellant's tenancy agreement in respect of Unit [REDACTED];
- clients did not attend Unit [REDACTED] itself for the purpose of availing of the Appellant's consultancy and advisory services;
- at the end of December 2020 nationwide public health measures came into force which restricted the movements of members;
- it was not in dispute in this appeal that these measures had the effect that persons throughout the State were limited in their movements such that had they wished to avail of the services of the Appellant in either [REDACTED] Enterprise Park, hotel conference facilities or their own premises, they would have been "significantly restricted" in so doing;
- on 1 January 2020 the Appellant registered for the CRSS through ROS;
- as part of its registration for the CRSS, the Appellant specified Unit [REDACTED] to be its business premises;
- the Appellant submitted 14 claims for ACTE payments under the CRSS over the course of the claim period beginning on 28 December 2020 and ending on 20 June 2021;
- the Appellant received a total of €7,531.50 in ACTE payments over the claim period;
- on 23 June 2021 the Respondent made inquiries with the Appellant regarding the nature of its business and its entitlement to receive support under the CRSS;
- in the course of this correspondence the Appellant informed the Respondent that Unit [REDACTED] was an administrative office which its client did not attend for the purpose of availing of its services and that the Covid-19 public health restrictions beginning at the end of December 2020 had the effect of reducing its turnover period January – August 2021 by 53%;

- on 4 October 2021 the Respondent issued a determination to the Appellant finding that it was not a “*qualifying person*” under section 485 of the TCA 1997, entitled to avail of support under CRSS;
- on 19 October 2021 the Appellant appealed this determination to the Tax Appeals Commission (“the Commission”).

Analysis

29. In order for a person to have constituted a qualifying person entitled to support under the CRSS during the claim period, it was necessary, *inter alia*, that they have carried on a “business activity” from a “business premises”, and for their customers to have been restricted by Covid-19 public health measures from attending such premises. In addition, it was a requirement that the effect of the restriction on attendance was that the business activity of the person was disrupted to the extent that turnover was down to only 25% of the comparable turnover figure derived from the period 1 January 2019 – 31 December 2019.
30. At hearing, the Respondent focused its submissions against the Appellant constituting a qualifying person, in the first instance, on the absence of a business premises from which it carried out the activity of providing consulting and advisory services to persons in the [REDACTED] industry. In its view, for the Appellant to have been a qualifying person it would have been necessary for it to have provided its services to customers from Unit [REDACTED] of [REDACTED] Enterprise Centre. Providing them from the meeting room was not sufficient, even though it was located in the same building within the Enterprise Centre. Still less could it be said that varying premises belonging to its clients and hotel conference facilities were premises from which it “*ordinarily*” carried on its consulting and advisory business activities.
31. The Commissioner is in partial agreement with these submissions of the Respondent. There must be little doubt that a mix of locations belonging to clients and hotel conference facilities rented out by the Appellant as required at which it held clinics/workshops did not constitute premises from where its business activity was “*ordinarily carried on*”. The Commissioner does not accept the submission made by the agent for the Appellant that, in effect, all that the CRSS required in this context was that the business activity have been carried out in a premises that was a “*fixed physical structure*”. To adopt this interpretation would, the Commissioner finds, at a minimum require that the word “*ordinarily*” be overlooked, as this term indicates the need for a permanence of function in relation to a premises. On this basis it is held that the premises belonging to the

Appellant's clients and the conference facilities of varying hotels did not fall within the definition of a "business premises". As such, the Appellant was not entitled to claim support under the CRSS in respect of business activities carried out therein.

32. By contrast the Commissioner has doubts in relation to the merit of the Respondent's contention that the meeting room in [REDACTED] Enterprise Centre was not a business premises given the particular facts of the case. Firstly, the meeting room in question was located within the same fixed physical structure as Unit [REDACTED]. Secondly, it was the evidence of the Appellant's controller and shareholder that her renting of this unit was based on the existence of meeting room facilities and their proximity to [REDACTED]. In the Commissioner's view the case could be made that though making use of the meeting room entailed incurring some expense additional to the rent paid for Unit [REDACTED] itself, it was nonetheless part of the premises from which it ordinarily carried out its activity.
33. It is not, however, necessary to make a ruling on this question touching on the scope of the CRSS. This is so because, on the evidence of the controller and shareholder, and as a stated in correspondence preceding the appealed determination and in written argument submitted as part of the appeal, the Appellant's turnover for the period January 2021 – August 2021 was 53% down in relation to the same period for 2019. Section 485(4)(b)(i) of the TCA 1997 provided at the time relevant to this appeal that one could only be a qualifying person capable of availing of ACTE payments under CRSS if turnover for the relevant period was no more than 25% of the "relevant turnover amount" (i.e. the average weekly turnover for 2019 multiplied by the total number of weeks in the "claim period"). It would therefore appear to be at a minimum unlikely that the Appellant met the turnover criterion prescribed by the legislation. The controller and shareholder did seem to suggest, after the giving of evidence had concluded and during legal submission, that it may have been that turnover remained under the relevant limit for the claim period and only exceeded it for the period January – August 2021 because of a spike in trade in the final two months. However the Commissioner observes that, as in all tax appeals of this nature, it is the Appellant that must shoulder the burden of proving their case (in this regard see the comments of Chareilton J at paragraph 22 of *Menolly Homes v Revenue [20100] IEHC 49*). In this regard the Appellant did not provide any material evidencing that its turnover for 2021 was boosted to such a degree in July and August that the turnover for the period January – June was no more than 25% of the relevant turnover amount for 2019. This being so, it must be found that the Appellant's appeal against the determination of the Respondent of 4 October 2021 that it was not a qualifying person has failed.

Determination

34. The Commission finds that the Respondent's determination that the Appellant was not a qualifying person was correct in law and stands affirmed. The Commissioner appreciates that the outcome of this appeal may be disappointing to the controller and shareholder who was involved in the presentation of this appeal. She gave compelling evidence at hearing in relation to the efforts made to keep the business afloat during the Covid-19 pandemic. This determination of the question of law in this appeal regarding the scope of the CRSS provision is of course no reflection on the challenges that were faced during this time.
35. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

36. 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

37. 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.



Conor O'Higgins
Appeal Commissioner
01 December 2023