



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 16^h April 2021. Within the Respondent’s determination it held that the Appellant was not a “*qualifying person*” under the Covid Relief Support Scheme (“the CRSS”) and as such was ineligible for payment supports under that scheme.
2. 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.
3. 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*”.
4. 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.
5. 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

6. The Appellant is a limited liability company engaged in the sale of [REDACTED] [REDACTED] to businesses in Ireland. The Appellant's registered office and place of business is [REDACTED]
7. On 4^h March 2021, the Appellant registered for the CRSS on the Respondent's online service.
8. Following a review of the Appellant's application, the Respondent wrote to the Appellant's agent and requested additional information on the nature of the Appellant's business operations.
9. The Appellant's agent replied to this correspondence on 10th March 2021. Included within the agent's correspondence was the following narrative:

"The main driver of this business is the director travelling around the country to meet with prospective customers and to demonstrate how the principal product works..."

10. On 11th March 2023, the Respondent wrote to the Appellant's agent in which it stated that the Appellant did not appear to meet the qualifying criteria for CRSS. In particular, the correspondence stated:

*"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].*

11. In response to that correspondence, the Appellant replied as follows on 12th April 2021:

“We have a customer facing fixed premises at [REDACTED] At this address we have our main [REDACTED] office, a reception area, a demonstration area, and a training room. We were seeing potential customers, strategic partners, [REDACTED] and business leaders at this address up to March 2020. Our business entails supply of a specialist product which requires customer training ([REDACTED]) in our training facility at [REDACTED] as part of the supply process. Since the introduction of Covid-19 restrictions we have had to cancel (sic) forbid all visits to our premises as we are not considered essential and have watched the orderbook (sic) disappear. We are now completely without funds and are receiving no form of assistance in relation to Covid-19.”

12. Following review of the Appellant’s documentation, the Respondent issued its determination to the Appellant on 16th April 2021. Within that correspondence, it stated it deemed the Appellant was ineligible for registration under the CRSS as it did not carry on a trade that was conducted from a business premises located within a region subject to restrictions introduced in line with the Government’s ‘Living with Covid-19 Plan’, *“with the result being that the business was required to prohibit or significantly restrict customers from accessing its premises.”*

13. The Appellant who was not in agreement with the Respondent’s determination, lodged its appeal with the Commission on 10th May 2021.

Documentation Presented to the Commission

14. Included within the documentation submitted to the Commission was the following:

14.1. A number of photographs of the Appellant’s business premises. These photographs displayed the following:

14.1.1. The office area which showed two desks with computer related accessories on/around them and a filing cabinet.

14.1.2. A second shot of the office from the rear which showed a desk and a promotional sign for the Appellant’s product.

14.1.3. A storage area with shelf racking on it and a narrow corridor. Those shelves displayed a number of boxes and two of those products displayed the name of the Appellant’s product on them. To the rear of the

photograph was another large sign which displayed the Appellant's product and information about that product.

14.1.4. The exterior of the building which showed a door with the Appellant's name displayed on it.

14.2. A letter from the Appellant's agent dated 22nd June 2022. This letter stated:

"... In relation to the Statement of Case lodged by the Revenue Commissioners, there is a reference to a response I made to Revenue that "The main driver of this business is the director travelling around the country to meet with prospective customers and to demonstrate how the principal product works."

I have never been to my clients premises at [REDACTED] but I understand from my client, that the premises there includes a reception area, a demonstration area and a training room and that he met with potential customers, strategic partners and [REDACTED] at that address up to March 2020.

While I have not visited the premises, I can confirm that I did visit the company's previous business premises at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] on several occasions. I recall on one particular occasion being invited into a demonstration room at that premises and there were several other parties present to witness how the Company's principal [REDACTED] product operated.

Based on this, I have no reason to believe that such a demonstration room and store facilities etc. are not located at the Company's current business premises.

Whilst the director does at times travel to meet with prospective customers, I now concede that this may not be the main driver of the business operations after all..."

14.3. A letter from an entity called "[REDACTED]" in [REDACTED]. This letter was signed by a [REDACTED] and was dated 5th July 2022. It stated:

"...This is a letter to confirm that I purchased two [REDACTED] from [REDACTED] [REDACTED] in 2019. Prior to purchasing I visited [REDACTED] at his home office, at [REDACTED] for a demonstration of a [REDACTED] in

the loss of its premises in 2015, it acquired and converted a garage and playroom at the Appellant's director's residence into a Training Room/Meeting Room/Stores and a fully equipped three person office. The Appellant submitted that prior to the onset of the Covid pandemic, it had between 4 to 5 customers visit its showroom on a weekly basis.

20. As the Appellant's business was not considered an "essential product or service" under the Covid-related legislation, the Appellant submitted that since March 2020, it was required to prohibit its customers from attending its business premises and as a result its turnover was significantly reduced.
21. The Appellant submitted that its business was a small family business and it and its directors had suffered greatly during the economic crash between 2008 and 2015. The Appellant stated that it had applied for alternative sources of Covid-related assistance for both its business and that of its staff to no avail. Such was the extent of Covid restrictions on the Appellant's business activities, the Appellant stated, it was now left in a position where it had no working capital to buy its products, which had to be bulk ordered from its suppliers in units of five, and it was unable to pay additional bills to get its business operational again such as the company vehicles DOE and insurance charges. Absent support being paid to it, the Appellant submitted it would be left in the position that it would have to close its business activity and cease trading.
22. In conclusion, the Appellant submitted that it satisfied the full requirements for CRSS eligibility and in particular as it was unable to remain operative during the periods of Covid restrictions, then it was required to prohibit or substantially restrict its customers from accessing its business premises. In those circumstances, the Appellant submitted that its appeal should be allowed.

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 entitled to registration under the CRSS.
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 1997, 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 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;”

28. 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 on (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”.

29. The Respondent 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...”*

30. The Respondent submitted it was evident from the Appellant's agent's correspondence of 10th March 2021 that the Appellant did not operate its business from its registered office address, but in place all activities were performed on-site at the customers' premises.
31. Owing to the nature of the Appellant's activities, the Respondent submitted that the Appellant's customers did not ordinarily attend the Appellant's business premises to secure its services and hence it was ineligible for support.
32. The Respondent opened section 4.1.5 of its guidelines³ which it stated provides an insightful example of why the Appellant's business activities were deemed ineligible for support. It states:

"SurfsUp Limited carries on a trade consisting of the operation of a retail shop and a surf school in Co. Donegal. The company has a business premises in which the shop is located and from which SurfsUp Limited sells surf boards, accessories and clothing. The company ordinarily provides group surf lessons at the beach (and not from its business premises). Because of Government Covid restrictions in force for Co. Donegal, which require the company to prohibit customers from accessing its business premises, SurfsUp Limited temporarily closed its shop.

For the purposes of making a claim under CRSS, SurfsUp Limited's relevant business activity consists of its trading activities which are ordinarily carried on from its business premises, i.e. the surf shop. The scheme does not extend to business activities that are ordinarily carried on outside of the business premises (i.e. the surf lessons carried on from the beach). This is the case even if bookings for surf lessons are paid for inside the business premises.

To make a claim under CRSS in respect of its relevant business activity (the surf shop), SurfsUp Limited must satisfy the turnover conditions and other qualifying criteria (see Section 4.4). During the period of restrictions, the company's turnover from the surf shop was nil. In determining the amount of CRSS payments the company is eligible to claim, the company will need to determine so much of its average weekly turnover in 2019 as relates to its relevant business activity (the surf shop). For these purposes, SurfsUp Limited should apportion its total turnover from the trade between the relevant business activity (the surf shop) and the remaining part of its trade (surf lessons) on a just and reasonable basis."

³ <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

33. The Respondent submitted in applying the above example to the facts of the Appellant's appeal, and in noting that the Appellant supplied and installed its product at its customer's premises, then it was apparent that there were no targeted restrictions in place that restricted the Appellant conducting its business activities from its business premises.
34. In consideration of the foregoing, the Respondent submitted 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.

Material Facts

35. 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:
 - 35.1. The Appellant's business activities commenced before 26^h December 2019.
 - 35.2. The Appellant's turnover was less than 25% of the average weekly turnover level of that in 2019.
 - 35.3. The Appellant's business profits are chargeable to taxation under Schedule D, Case 1.
 - 35.4. The Appellant intended to (and subsequently did) carry on business activities after the "Covid-19 restrictions" were lifted.
 - 35.5. The Appellant had complied with all their VAT registration and return obligations.
 - 35.6. The Appellant held a tax clearance certificate at all material times.
 - 35.7. The Appellant applied for registration under the CRSS on 4th March 2021.
 - 35.8. On 16th April 2021, the Respondent issued its determination notice in which it stated as the Appellant did not satisfy the necessary criteria for CRSS registration, its registration was being refused.
36. In addition, the Commissioner found the following material facts from the parties submissions:
 - 36.1. The Appellant is engaged in the trade of the provision of a [REDACTED] known as [REDACTED]

- 36.2. The activities conducted by the Appellant are considered non-essential [REDACTED] services.
- 36.3. The Appellant states it required the use of its premises as a storage area for its products, for administration services, to host potential customers and to demonstrate and train its customers on its product's capabilities.
- 36.4. In support of this position, the Appellant produced correspondence from a previous customer and [REDACTED].
- 36.5. The letter provided from [REDACTED] detailed that a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 36.6. Within its Notice of Appeal, the Appellant stated that its business activities were conducted from its customers' premises. Following receipt of the Respondent's Statement of Case, the Appellant provided the Commission with a copy of its agent's letter. That correspondence stated that the Appellant's agent may have been mistaken in relation to where the Appellant conducted its business activities and that he was now of the view that the Appellant's business activities were conducted on occasion from its business premises also.
- 36.7. No split of the turnover generated by the Appellant at its business premises and those of its customers was provided to the Commission.
- 36.8. The Appellant provided the Commission with a number of photographs of its business premises. Following a review of those photographs, it is unclear where the Appellant's customers are trained in the use of its product nor what area of the building is used for product demonstrations.
- 36.9. No training manuals or other documentation were provided to the Commission to assist the Commissioner understand the type or level of training required by the Appellant's customers.
- 36.10. The Appellant operates part of its business activities from a "building or other physical fixed structure".

Analysis

37. In consideration of the nature of the Appellant's product and in noting from the Appellant's own submissions that the product is installed at its customer's premises, the Commissioner finds that the place of supply of the Appellant's product is at the premises of its customers rather than those of the Appellant.
38. The Commissioner notes from the Appellant's submissions that its customers require a demonstration and training in the use of its product prior to sale but as those services are ancillary to the Appellant's main activity, the Commissioner finds those services incidental to the Appellant's business activity.
39. The Commissioner further notes that the Appellant states in its submissions that it required the use of its business premises to meet with potential customers, strategic partners, business leaders and [REDACTED]. However the requirements under section 485 TCA 1997 is that the Appellant is required to prohibit customers from accessing its business premises and as much of the noted visitors to its business premises were not customers, then this was of limited assistance to the Appellant's appeal. Furthermore, it is unclear to the Commissioner following a review of the provided photographs and the Appellant's submissions, where potential customers are shown product demonstrations or trained in the use of the Appellant's product, nor what type of training is required in the use of the product.
40. If the Commissioner is incorrect in reaching his findings, he notes that the Appellant provided the Commission with correspondence from one of its customers which confirms that he received training and a demonstration of the Appellant's product at the Appellant's business premises prior to purchase of its product. The Commissioner further notes that section 485 (6) TCA 1997 permits an entities turnover to be split on a "just and reasonable basis" where it provides a mixture of products which are eligible for CRSS support and those that are not.
41. Within the Appellant's own submissions it concedes that some of its turnover is generated from meetings and product demonstrations at its customer's business premises and submits that some of its turnover is generated at its business premises. However, as the Appellant failed to provide the Commission with any basis which would support its turnover being split on a "just and reasonable" basis, the Commissioner in noting that the burden of proof rests with the Appellant in proving its case, must find that the Appellant has failed to provide the Commissioner with any evidence capable of discharging that

burden. For those reasons, the Commissioner finds that the Appellant's business activities do not require its customers to ordinarily attend its business premises.

42. 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.
43. 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*".
44. 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).
45. 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.
46. 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 guidelines 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....”

47. 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 for registration under the CRSS. Therefore, the Respondent’s determination in which it held that the Appellant was ineligible for CRSS registration as it was not required to prohibit or substantially restrict its customers from accessing its business premises is upheld by the Commissioner.
48. 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

49. 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 Commissioner is required to uphold the Respondent’s determination in which it held that the Appellant was not entitled to registration under the CRSS as it failed to satisfy the requirements under section 485 TCA 1997.
50. 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.
51. 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

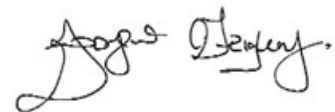
the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Notification

52. 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

53. 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

15th December 2023