



Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## 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”) dated 20<sup>th</sup> September 2021 made pursuant to section 485 (24) (a) of the Taxes Consolidation Act 1997 (“TCA 1997”). 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 13<sup>th</sup> October 2020 to 15<sup>th</sup> August 2021 (“the claim period”).
2. During the claim period the Appellant received payments under the CRSS in the amount of €84,138.60.
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 website<sup>1</sup>.
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, 98TACD2022<sup>2</sup>. 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.

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

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

## Background

7. The Appellant is a limited liability company engaged in the trade of [REDACTED] [REDACTED] throughout the State. The Appellant's registered office address is situated at [REDACTED] [REDACTED].
8. On 12<sup>th</sup> November 2020, the Appellant registered for the CRSS via the Respondent's online service.
9. On 17<sup>h</sup> February 2021, the Appellant contacted the Respondent and queried the amount of CRSS payments it had received. The Appellant stated that while it usually received a weekly CRSS payment of €1,829.10, it had received an amount of €600 in the week in question.
10. The Respondent replied to this correspondence the following day and requested clarification from the Appellant regarding the relevant range of dates of its CRSS claim. Within that correspondence, the Respondent further requested a detailed description of the Appellant's business activities.
11. On 2<sup>nd</sup> March 2021, the Appellant advised there was no issue with the amount of CRSS that it had received and the previous suggestion to the contrary came as a result of a mistake on its part. That is to say, the correct CRSS payments had been received according to the Appellant. The Appellant also advised the [REDACTED] [REDACTED].
12. By way of reply on 3<sup>rd</sup> March 2021, the Respondent issued the Appellant with a letter advising that its business had not met the criteria for inclusion on the CRSS. The Respondent explained in particular that to be eligible for CRSS payments '*the business must be required by the specific terms of Covid restrictions to prohibit or significantly restrict customers from accessing its own business premises*' and as the Appellant did not fulfil this requirement, then it was ineligible for inclusion on the scheme. Within that correspondence, the Respondent advised the Appellant if it did not agree with the Respondent's findings, it could submit information in support of its position within the following ten days.
13. On the same date, the Appellant responded as follows:

"[The Appellant] is [REDACTED]. Because Government closed [REDACTED] in Level 5 restrictions customers are prohibited to enter [REDACTED] [REDACTED], so customers are restricted from using our services - [REDACTED]. Due to Level 5 Restrictions (sic) company

cannot [REDACTED] already purchased and already contracted with [REDACTED] and cannot continue usual business activity at all. (Sic) Company hires [REDACTED] so it is company's place of business and access to it has been forbidden for its customers by level 5 restrictions. [Emphasis added.]

14. Later that day, the Respondent re-registered the Appellant for the CRSS and the Appellant continued to receive payments under the scheme.
15. On 27<sup>th</sup> July 2021, the Respondent telephoned the Appellant's agent regarding the CRSS Restart Payment<sup>3</sup>. The following day the Respondent's agent replied by correspondence as follows:

*"My client is a [REDACTED]. Yesterday we received a call from Revenue that we have to apply for Restart Week by the end of this month, but my client has significantly low turnover as [REDACTED] do not operate at full capacity. Can I kindly ask you to confirm if my Client can participate in the Scheme longer? Program was extended by (sic) the end of this year, and turnover between January and July is 10% compared to the same period in 2019."*

16. On 29<sup>th</sup> July 2021, the Respondent requested the following information to review the Appellant's eligibility for inclusion on the CRSS and to enable it to respond to the Appellant's agent's correspondence:

*"- What is the exact nature of the business activity?  
- Is the business closed due to the Covid restrictions?  
- Is there a fixed place of business? Is it rented?  
- Does any part of the business activity take place outside of the business premises?  
- Are customers restricted from entering the premises due to Covid?  
- Will the business premises be available to customers to enter when the restrictions are lifted?"*

17. Absent a reply, the Respondent further wrote to the Appellant on 20<sup>th</sup> August 2021. Within that correspondence the Respondent requested the following information:

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<sup>3</sup>The CRSS Restart Payment was a payment made available to those businesses who were registered for the CRSS and who were resuming trading activities following a period of mandated closure. Those eligible businesses were entitled to claim two "restart week" payments to assist the business with the re-opening costs of its business. Source: <https://www.revenue.ie/en/corporate/press-office/press-releases/2021/pr-050721-claiming-crss-restart-week-restrictions-ease.aspx>

*“- What is the exact nature of the business activity? Is your client a [REDACTED] or is it [REDACTED] or both?*

*- Is the business still restricted due to the Covid restrictions?*

*- Is there a fixed place of business? Is it rented?*

*- Does any part of the business activity take place outside of the business premises?*

*- If this is a [REDACTED] is its weekly trading below 25% turnover.”*

18. On the same date, the Appellant responded as follows:

*“We had verification done by revenue on 03/03/21 - please find below response from [REDACTED]. I have contacted Revenue and asked for an advice regarding our eligibility now when restrictions are partly lifted from July but some restrictions that are still in place. In [REDACTED]. I have contacted Revenue CRSS helpline two weeks ago and I received advice and referring pages in CRSS guidelines, so it is clear now that we are still affected by restrictions, weekly turnover is less than 25% and we can still claim CRSS.”*

19. Having failed to address the specific queries raised by the Respondent, the Respondent further requested a reply to the following questions: *“What is the exact nature of the business activity? Is your client [REDACTED]?”*

20. In reply, the Appellant restated the narrative it provided on 3<sup>rd</sup> March 2021 (paragraph 13 above refers).

21. The Respondent replied by return. Within its correspondence the Respondent advised the Appellant that it was completing a full review of the Appellant’s entitlement to CRSS and that this review had to be completed before any further payments issued to it. The Respondent noted that the Appellant had previously stated that the “[c]ompany [REDACTED] [REDACTED] so it is company's place of business and access to it has been forbidden for its customers by level 5 restrictions.” To clarify the position, the Appellant was requested to provide answers to the following questions:

*“- Is the business premises at [REDACTED] [REDACTED] a distribution centre i.e. office and storage facilities or is it a [REDACTED] that the general public access to [REDACTED] ?*

*- Does [the Appellant] run a [REDACTED] from [REDACTED] [REDACTED] ?*

- Does [the Appellant] own/rent premises that are [REDACTED] and if so where are these rental properties?"

22. The Appellant replied as follows to that correspondence on 25<sup>th</sup> August 2021:

*"The business premises at [REDACTED] is an office, storage facilities – this is a place where we work for all year, negotiate purchase [REDACTED], prepare and run [REDACTED] etc. This is the place where the business is organised, managed and led. Once we [REDACTED], we book [REDACTED] to the public. We are unable to trade when restrictions are in place as our Customers have no access to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]"*

23. The following day, the Respondent issued a further letter in which it stated it appeared that the Appellant was ineligible for inclusion on the CRSS. The Appellant was advised, absent supporting documentation, to be furnished within the following 10 days, which supported its position that it was eligible for CRSS payments, that the Respondent would issue it with a determination notice denying the Appellant eligibility under the scheme. Furthermore, within that correspondence the Respondent advised the Appellant in the event of it being deemed ineligible for inclusion on the CRSS, it would be required to repay any sums it had received under the scheme.

24. The Appellant's agent replied to that correspondence as follows on 31<sup>st</sup> August 2021:

*"In response to your correspondence dated 26/08/2021 there is a few answers which I would like to hear from the Revenue.*

*On the 17/02/2021 we have had verification check for my client [REDACTED] done by [REDACTED] where full business description and answer to all questions were provided. We received same letter as you have sent and we have provided (sic) with all answers. Verification check was completed on the 03/03/2021. [REDACTED] did not have additional questions or queries and confirmed that scheme is approved, and company can process to claim another weeks (sic). [Emphasis added]. For the next 6 months my client was claiming the CRSS weekly as he (sic) had an official confirmation from Revenue in writing that company is entitled to do it. Could you please explain why one person form CRSS section states that [REDACTED]*

██████████ is eligible to claim CRSS and then 6 months later all of the sudden ██████████ is not meeting qualifying criteria? How is that even possible? In my understanding if the verification check is completed, eligibility confirmed in writing and the claim was not stopped that is mean (sic) my client meets the qualifying criteria and is entitle (sic) to claim CRSS, if I am wrong please advise so how. It is beyond the understanding how after verification check has been done, now Revenue request my client to repay the CRSS and the reason for it is not meeting qualifying criteria, where back in March the same criteria were (sic) meet ,could you please explain?

My client business description was provided but let me explain it to you once again.

██████████ is a ██████████. He (sic) has ██████████ the beginning of the 2020 year and had ██████████ but due to government restrictions could not make any ██████████ as customers (sic) access to ██████████ were (sic) forbidden. My client was left without any Income for a good few months and now you stating he (sic) was not entitled to claim CRSS. As I have explained previously example 16 page 29 express similar situation – company prepare to trade for a couple of weeks, ██████████, do ██████████ ██████████ and then Government forbid access to mentioned unit (as in example 16 access to Shopping Centre).

According to mygov.ie there is a list of an essential services with Level 5 restrictions (copy below). I have checked all categories. Both of Clients' premises – an office on ██████████ and hired ██████████ were not allowed to trade – were not listed as an essential service. Therefore, by the specific terms of Covid restrictions it prohibit or significantly restricted customers of ██████████ from accessing Client's business premises. Restrictions were imposed all over Ireland so also meet condition b from your letter – ██████████ are allowed to trade from July 2021 with a ██████████ ██████████ are still under restrictions. In summary I do consider that ██████████, in fact, meet the eligibility criteria.”

25. The referred to attachment was as follows:

“View the list of essential services at Level 5.

From: Department of the Taoiseach

Published on 14 October 2020

Last updated on 14 April 2021

...

6. Wholesale and retail trade.

...

8. Accommodation and food services.

...

12. Rental and leasing activities.”

26. On 20<sup>th</sup> September 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.

27. The Appellant who was not in agreement with the Respondent’s determination, lodged its appeal with the Commission on 19<sup>th</sup> October 2021.

**Documentation Presented to the Commission**

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

28.1. A copy of a purported rental agreement which contained the following information:

[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	:	[REDACTED]	[REDACTED]
Terms 40%		[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	Week 1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



28.2. An email from the Respondent to the Appellant dated 22<sup>nd</sup> February 2022. Within that email, the Respondent stated:

*"...I refer to the CRSS determination that issued to [REDACTED] and would appreciate if you could provide some further information.*

*Is Turnover of [REDACTED] d derived only from monies received from the individual [REDACTED] or is there ever any scenario where the funds from public patrons buying [REDACTED] goes directly to [REDACTED]? Could you please provide sample copies of the contracts between [REDACTED]..."*

28.3. The Appellant replied to that request on 3<sup>rd</sup> March 2022 and stated:

*"We receive money from [REDACTED]. Each [REDACTED]*

*Please find attached agreed conditions to [REDACTED] (sic) in February - Renter: [REDACTED] we receive 40% and 60% is for [REDACTED] We do not [REDACTED]*

28.4. The "attached conditions to the [REDACTED]" are detailed at sub-paragraph 28.1 above.

## **Submissions**

### *Appellant*

29. The Appellant submitted that it satisfied 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 the Respondent was of the opinion that the Appellant did not operate its business from a business premises, as defined.

30. The Appellant submitted that it was not a [REDACTED] but in place purchased [REDACTED], which required an advance "minimum guarantee" payment which ranged in price from €10,000 to €80,000. Upon receipt of the purchase rights, the Appellant explained, it [REDACTED]  
[REDACTED]  
[REDACTED] Within its provided Statement of Case the Appellant explained:

“...We [REDACTED] in the above [listed] premises for specified periods of time at rates which depend on the amount [REDACTED]. We do not supply [REDACTED], we take exclusive possession of [REDACTED] during the time we rent them. Please see attached sample agreement of lease [see sub-paragraph 28.1 above] with a number of the above [REDACTED]

31. The Appellant further explained that it had paid for [REDACTED] in advance of the pandemic presenting and following the imposed restrictions brought about by Government Covid related restrictions put in place, [REDACTED]. [REDACTED], it was unable to sell [REDACTED]. The Appellant further stated that its customers were the [REDACTED] and the offices it operated its business from were not mobile or outdoor settings but rather “buildings or other physical fixed structures”.
32. The Appellant further submitted that its business activities were that of a short term hire business and in support of this position it opened the case of *Ward v Ryan* (1875) 10 CL 17 (“*Ward*”) in which it was held that a tenancy at will involves occupation of land for an indefinite period, with either party entitled to end the arrangement at any time. The Appellant submitted that as the Appellant was a tenant of the [REDACTED] for the duration of the length of the [REDACTED], then in line with *Ward*, it operated its business activities under a tenancy at will and as such, its business activities were conducted from a building or other physical fixed structure.
33. The Appellant further opened section 3 of the Landlord and Tenant Law (Amendment) Act Ireland 1860 which provides that “*the relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.*” The Appellant submitted under this “well established law” that it was evident from the Appellant’s business activities that the Appellant was a tenant in the [REDACTED]
34. Furthermore the Appellant submitted that there was no requirement within the Landlord and Tenant (Amendment) Act 1860 or any of the subsequent amendment Acts for a tenancy to be in writing unless there was an intention to transfer the underlying land or building for a specific period of time. As the Appellant rented the [REDACTED] for varying

periods of time, dependent on the availability [REDACTED], the Appellant submitted that there was no requirement for a formal agreement to be in writing to evidence its tenancy.

35. The Appellant submitted that the operation of its business activities was of a similar nature to the example contained in the Respondent's CRSS guidelines<sup>4</sup>. The Appellant opened that example which is contained in example 16 on page 29 of those guidelines as follows:

*"Yulettime Limited runs a business specialising in Christmas decorations. For much of the year, the company would have very little turnover but is busy sourcing stock and preparing for the Christmas period. The company rents a vacant unit in a shopping centre in Co. Dublin every year from September to December, and it is during this period that the company makes its annual turnover.*

*The Government restrictions in place means that after only a few weeks of opening, Yulettime Limited is forced to close its unit as a non-essential retail outlet prohibited from allowing customers access to its premises. For the purpose of determining whether Yulettime Limited is eligible to claim under the CRSS, the company must be able to demonstrate that the turnover from its relevant business activity during the claim period will not exceed 25% of the average weekly turnover for 2019 over the same number of weeks (i.e. (total turnover in 2019/52) x number of weeks in the claim period). Yulettime Limited is not restricted from CRSS on the basis that the company has a seasonal business, where all qualification criteria are met."*

36. That Appellant stated that it had viewed the Respondent's webinar on the Respondent's website<sup>5</sup> and it noted that the operation of [REDACTED] quoted as an example of a business that would qualify for inclusion on the CRSS. As such, the Appellant submitted it was unclear why the Respondent had deemed its business activities ineligible for inclusion on the CRSS.
37. Furthermore, the Appellant submitted that it had a CRSS verification check conducted by the Respondent on 17<sup>th</sup> February 2021. The Appellant submitted that it had provided a full business description and answered all of the Respondent's posed questions before being informed that it was eligible for inclusion on the CRSS. Despite this position, the Appellant submitted, the Respondent asked for the same information on 20<sup>th</sup> August

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<sup>4</sup> 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>

<sup>5</sup> <https://www.revenue.ie/en/self-assessment-and-self-employment/crss/webinar-crss.aspx>

2021. The Appellant further submitted that despite providing the same information that it had provided in February that year, the Respondent formed a different view to its earlier opinion and found that the Appellant's business activities were deemed ineligible for inclusion on the CRSS. The Appellant stated that it was unclear as to how the Respondent could have formed different opinions given the same set of circumstances prevailed.

38. The Appellant stated that it had invested the CRSS payments received into keeping the business operational and the effect of it now having to repay the CRSS payments received could result in its business activities being forced to cease operations. As it believed it fulfilled the eligibility criteria for the CRSS and as the effect of repayment of those sums could result in its business activities being required to close, the Appellant submitted that its appeal should be allowed.

*Respondent*

39. 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.
40. 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."*

41. 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.*"
42. 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 ...”*

43. 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;”*

44. 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”.*

45. 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...”*

46. 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.”*

47. The Respondent opened part 4.1.3 of its guidelines<sup>6</sup>, which considers “*What is a business premises?*” It states:

*“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,*

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<sup>6</sup> See footnote 4 above.

*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."*

48. 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."*

49. 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. The Respondent submitted that while [REDACTED] [REDACTED] may have qualified for CRSS support, this did not mean that the Appellant was automatically eligible for inclusion on the CRSS.

50. The Respondent explained as the Appellant had stated in its own submissions that it was in the business of [REDACTED] and as it did not own or operate the [REDACTED], then its business activities were not those of [REDACTED]. The Respondent submitted that as the Appellant's customers are the various [REDACTED] and as its turnover was derived from income received from [REDACTED], then it

followed that while the Appellant's customers (i.e. ██████████) were required to prohibit its customers from accessing its building, no such requirement was placed on the Appellant. Put plainly, the Respondent submitted that as the Appellant's customers were ██████████ then it was ineligible for CRSS supports as the Appellant was not required to prohibit or significantly restrict its customers from attending its business premises.

51. The Respondent further submitted that the Appellant's registered office address which it operated its business from was not a ██████████ and the turnover generated by the Appellant was not directly dependent upon members of the general public ordinarily attending at its premises. As the Appellant's premises were not the premises where the relevant business activity took place for the purposes of section 485 TCA 1997 and as the Appellant failed to establish these premises were the premises where the customers of the Appellant's trade acquired the services from, the Respondent submitted that the Appellant was not eligible for inclusion on the CRSS.
52. 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.

### **Material Facts**

53. 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:
  - 53.1. The Appellant's business activities commenced before 26<sup>h</sup> December 2019.
  - 53.2. The Appellant's turnover was less than 25% of the average weekly turnover level of that in 2019.
  - 53.3. The Appellant's business profits are chargeable to taxation under Schedule D, Case 1.
  - 53.4. The Appellant intended to (and subsequently did) carry on business activities after the "Covid-19 restrictions" were lifted.
  - 53.5. The Appellant had complied with all their VAT registration and return obligations.
  - 53.6. The Appellant held a tax clearance certificate at all material times.



- 53.7. The Appellant applied for payments under the CRSS and received payments under that scheme in the sum of €84,138.60 for the period 13<sup>th</sup> October 2020 to 15<sup>th</sup> August 2021.
- 53.8. The Respondent issued a determination notice to the Appellant on 20<sup>th</sup> September 2021. Within that notice the Respondent demanded the Appellant to repay the CRSS payments it has received as it was deemed ineligible for inclusion on that scheme.
54. In addition, the Commissioner found the following material facts from the parties submissions:
- 54.1. The Appellant is engaged in the trade of [REDACTED].
- 54.2. The Appellant conducts its business activities from [REDACTED]  
[REDACTED]
- 54.3. No evidence was produced to the Commission which confirmed that the Appellant's customers ordinarily attended those premises.
- 54.4. On 18<sup>h</sup> February 2021, the Respondent requested details of the Appellant's business activities. The Appellant subsequently advised that its activities were that of [REDACTED].
- 54.5. As a result of the Appellant's business description, the Respondent deemed the Appellant was ineligible for inclusion on the CRSS support.
- 54.6. Following subsequent correspondence received from the Appellant which included the narrative "*customers are prohibited [REDACTED] [REDACTED] – they do not have any access [REDACTED]*" and "*Company [REDACTED] so it is company's place of business and access to it has been forbidden for its customers by level 5 restrictions*", the Respondent re-registered the Appellant on the CRSS.
- 54.7. On 29<sup>th</sup> July 2021 and 20<sup>th</sup> August 2021, the Respondent requested further details of the Appellant's business activities. The Appellant's reply detailed the activities conducted at its office address and repeated that it hired the use of [REDACTED]. The Appellants correspondence further stated that it sold [REDACTED] within that correspondence.
- 54.8. The Commission were provided with a document which purported to be a rental agreement for the hire [REDACTED]. Aside from details which included the

██, the document detailed that the terms were “40%”.

54.9. No rental agreement or agreement to hold land was presented to the Commission.

54.10. No evidence of advance payments to the owners of the ██████████ was produced to the Commission.

54.11. Within the Appellant’s correspondence of 3<sup>rd</sup> March 2022 addressed to the Respondent, it stated that it did not receive the payment of monies from members of the public but in place received those funds from the ██████████ itself.

### **Analysis**

55. To consider the matter under appeal, it was fundamental that the Commissioner understood the exact nature of the Appellant’s business activities. This analysis was not assisted by the Appellant’s contradictory narrative (which may have been compounded as a result of the Appellant and its agent’s first language not being English) detailed within its appeal documentation. This included matters such as submitting that the Appellant ██████████ to later stating ██████████  
██  
██.

56. Following careful consideration of the Appellant’s submissions, it is evident to the Commissioner that the Appellant’s business activities are the ██████████  
██ and the Appellant’s turnover is derived from a percentage of the takings ██████████ which are collected from members of the public by the ██████████

57. As it is the ██████████ who collects the money from the members of the public, it follows that the entity in question which was required to prohibit or significantly restrict members of the public from accessing its business premises was the ██████████ and not the Appellant. Furthermore, as the Appellant provided no evidence that it was required to prohibit its customers (the operators of ██████████) from accessing its (office) business premises or that its customers required access to its premises, the Commissioner finds that the Appellant was not required to prohibit or substantially restrict its customers from attending its premises.

58. 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.

59. 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".
60. 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).
61. 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.
62. 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<sup>7</sup> 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*

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<sup>7</sup> <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

*by the Government, customers of the business are prohibited, or significantly restricted, from accessing those business premises....”*

63. 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. As the Commissioner has reached identical findings in the Appellant’s appeal, it follows that the Commissioner is required to make the same findings and hold that the Appellant was not entitled to avail of payments under the CRSS, as it similarly was not required to prohibit or significantly restrict members of the public from accessing its business premises under the specific terms of Covid restrictions.
64. 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.
65. In a like manner to the similar appeal, the Appellant is required to repay the Respondent, the amount of CRSS payments it received, €84,138.60 without unreasonable delay in accordance with the provisions of section 485 (17) TCA 1997. Failing which, the Respondent is authorised in accordance with section 485 (15) (a) TCA 1997 to raise an assessment against the Appellant under Schedule D, Case IV for an amount of €336,554 which represents four times the amount of ACTE received by the Appellant in error.
66. The Commissioner notes the Appellant’s comments that it received payments under the CRSS despite informing the Respondent at the outset of its business activities. However, as noted from paragraph 55 above, the Commissioner had difficulty in establishing the exact nature of the Appellant’s business activities from the submissions received. In addition, the Commissioner also notes that the Respondent’s attempts to do likewise in requesting responses to posed questions were frustrated by insufficient engagement or responses from the Appellant.
67. Furthermore, the Commissioner notes that registration for the CRSS was done on a self-assessment basis which required the Appellant to confirm based upon the applicable legislation and applicable guidelines that it was eligible for registration under the CRSS. The Commissioner also notes at the time it completed its registration, the Covid pandemic was at its height, which had an obvious effect on the Respondent’s operations and its ability to effectively review the volume of CRSS registrations received.

68. 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**

69. 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 €84,138.60 representing the ACTE sums received by it in error without “unreasonable delay”. Failing this, the Respondent is authorised to raise an assessment to tax under Schedule D, Case IV, against the Appellant in the sum of €336,554 which represents four times the amount of ACTE received by the Appellant in error.

70. It is understandable that the Appellant 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.

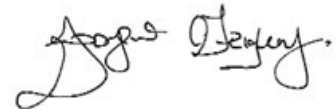
71. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions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

### **Notification**

72. 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**

73. 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**

**18<sup>th</sup> December 2023**