



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

102TACD2025

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), in relation to a Notice of Amended Assessment (“the Assessment”) to income tax dated 8 August 2024 in the amount of €46,845.25 for the tax year 2023 issued by the Revenue Commissioners (“the Respondent”).
2. On 2 December 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. In this appeal, the Appellant acted through his agent.
4. The Appellant is a director of [REDACTED] (“the Company”) and is jointly assessed with his spouse.
5. On 6 August 2024, the Appellant filed an income tax return for the tax year 2023, in which the Appellant claimed credits for PAYE deducted from income from the Company. On 6 August 2024, the Respondent issued a self-assessment to the Appellant for the tax year 2023, which showed a balance overpaid in the amount of €3,820.44.
6. On 8 August 2024, the Respondent issued the Assessment to the Appellant, which showed a balance payable in the amount of €46,845.25. The liability arose in circumstances where the Respondent amended the Appellant’s income tax return for the tax year 2023 by removing credits for PAYE deducted, under section 997A of the TCA 1997.
7. On 2 September 2024, the Appellant submitted a Notice of Appeal to the Commission, which enclosed supporting documentation. On 20 November 2024, the Respondent submitted a Statement of Case. On 29 November 2024, the Appellant submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

8. The legislation relevant to this appeal is as follows:
9. Section 10(3) of the TCA 1997 provides:

“A person shall be connected with an individual if that person is the individual's husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual's husband, wife or civil partner.”

10. Section 997A of the TCA 1997 provides:

(1) (a) In this section -

'control' has the same meaning as in section 432;

'ordinary share capital', in relation to a company, means all the issued share capital (by whatever name called) of the company.

(b) For the purposes of this section -

(i) a person shall have a material interest in a company if the person, either on the person's own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

(ii) the question of whether a person is connected with another person shall be determined in accordance with section 10.

(2) This section applies to a person to who, in relation to a company (hereafter in this section referred to as 'the company'), has a material interest in the company.

(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given against the amount of tax chargeable in any assessment raised on the person or in any statement of liability sent to the person under Regulation 28 of the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.

(4) Where the company remits tax to the Collector-General which has been deducted from emoluments paid by the company in a year of assessment, the tax remitted for that year of assessment shall be treated as having been deducted from emoluments paid to persons other than persons to whom this section applies in priority to tax deducted from persons to whom this section applies.

(5) Where, in accordance with subsection (4), tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies, the tax to be so treated shall, if there is more than one such person, be treated as having been deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.

(6) Where, in accordance with subsection (5), the tax to be treated as having been deducted from the emoluments paid to each person to whom this section applies exceeds the actual amount of tax deducted from the emoluments of each person, then the amount of credit to be given for tax deducted from those emoluments shall not exceed the actual amount of tax so deducted.

(7) Notwithstanding section 960G and for the purposes of the application of this section, where a company has an obligation to remit any amount by virtue of the provisions of -

(a) the Social Welfare Consolidation Act 2005 and regulations made under that Act, as respects employment contributions,

(b) Part 18D and regulations made under that Part, as respects universal social charge, and

(c) this Chapter and regulations made under this Chapter, as respects income tax, any amount remitted by the company for a year of assessment shall be set -

(i) firstly against employment contributions,

(ii) secondly against universal social charge, and

(iii) lastly against income tax.

(8) A person aggrieved by a decision of the Revenue Commissioners in relation to a claim by that person for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, may appeal that decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that decision."

Submissions

Appellant

11. In his Notice of Appeal, the Appellant submitted:

12. In his Statement of Case, the Appellant submitted (among other things):

Mitigation

Conclusion

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Respondent

13. In its Statement of Case, the Respondent submitted (among other things):

“██████████ is a Director of ██████████
██████████, with a 55% shareholding. ██████████ is jointly assessed with his spouse,
██████████. Both were in receipt of a salary from ██████████
██████████ for the year 2023.

6 August 2024

██████████ Income Tax return for the period ending 31/12/2023 was filed. Credit for
PAYE deducted from income from ██████████ was claimed as follows: ██████████
██████████. The Self-Assessment calculation in
this return gave rise to a refund of €3,820.44.

8 August 2024

When the refund was being processed, Revenue found that ██████████ had
outstanding Employer PAYE/PRSI liabilities for October and November 2023
(€106,226.24 and €33,399.63 respectively). A Revenue Assessment was raised,
removing the credit for PAYE deducted, under the provisions of Section 997A Taxes
Consolidation Act 1997.

13 August 2024

██████████ agent contacted Revenue to ask that the credit for tax deducted be re-
applied for the period ending 31/12/2023, on the basis that credit should have been
allowed for PAYE and USC (totalling €50,665.69).

14 August 2024

Revenue records indicated ██████████ was a Director of ██████████
██████████. In his capacity as a Director, ██████████ was a person to
whom Section 997A Taxes Consolidation Act 1997 applies. ██████████ spouse
██████████ was deemed a connected person in accordance with Section
10, Taxes Consolidation Act, 1997. There was an outstanding liability for ██████████
██████████ for 2023. As a result of that liability, ██████████ was not entitled to claim credit
for PAYE/USC deducted. This finding was communicated to ██████████ agent.

21 August 2024

██████████ agent asked Revenue to review the decision communicated on 14 August 2024. In support of the request the agent provided a copy of email correspondence between the liquidator of ██████████. The email correspondence from the liquidator stated, "all taxes were paid up to Sept 2023, so they should have applied a credit for all taxes paid up to September 2023". The liquidator further advised there may be a small liability for October and November re PAYE and USC (██████████) and advised ██████████ to contact Revenue to explain that the company did in fact make all the payroll payments up to September 2023 correctly.

26 August 2024

Revenue reviewed the case and found that the assessment under Section 997A TCA stood, and this finding was communicated to ██████████ agent. In determining the amount of tax remitted to the Collector General, the tax remitted by the company for the year of assessment as a whole, must be considered, and Revenue may deny prescribed individuals from claiming a credit for the income deducted from their emoluments but not remitted to Revenue by companies in which those individuals hold a material interest. Upon the shortfall of PAYE-related liabilities arising in the latter part of 2023, the effect of Section 997A TCA 1997 is to treat monies previously paid as Director's PAYE to Revenue by the company earlier in 2023, as not paid in respect of 'persons other than persons to which this section applies'. This effectively strips the Directors of a credit for PAYE paid in respect of them before the shortfall arose. The remittances of €25,863.11 and €17,302.58 therefore fall to be treated as deductions from emoluments paid to persons other than ██████████."

Material Facts

14. Having read the documentation submitted, and having noted that the Appellant's Statement of Case stated that "*the facts in the Respondent's Statement of Case are not disputed...the PAYE amounts owed in respect of the year 2023 detailed in Revenue's Statement of Case are not disputed*", the Commissioner makes the following findings of material fact:

- 14.1. The Appellant was a director of and held more than 15% shareholding in the Company.
- 14.2. The Appellant is jointly assessed with his spouse.

- 14.3. The Appellant and the Appellant's spouse received a salary from the Company for the tax year 2023.
- 14.4. On 6 August 2024, the Appellant filed an income tax return for the tax year 2023, in which he claimed credits for PAYE remitted by the Company, in the amounts of €25,863.11 and €17,302.58 for the Appellant and his spouse respectively.
- 14.5. The Respondent found that the Company had outstanding employer PAYE/PRSI liabilities for the months October and November 2023 in the amounts of €106,226.24 and €33,399.63.
- 14.6. On 8 August 2024, the Respondent issued a Notice of Amended Assessment in which the Respondent removed credits for PAYE deducted, under section 997A of the TCA 1997.
- 14.7. On 2 September 2024, the Appellant submitted a Notice of Appeal.

Analysis

15. This appeal relates to a Notice of Amended Assessment in which the Respondent assessed the Appellant to income tax in the amount of €46,845.25 for the tax year 2023. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to assess the Appellant to income tax in the amount of €46,845.25 for the tax year 2023. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

"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".

Application of Section 997A

16. Section 997A of the TCA 1997 applies to individuals with a "material interest" in a company. Section 997A(1)(b)(i) of the TCA 1997 provides (in summary) that a person shall have a "material interest" in a company if the person, either on the person's own or with any connected persons, or if any person connected with the person with or without any such other connected persons is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control more than 15 per cent of the ordinary share capital of the company.

17. In this appeal, the Appellant stated in his Statement of Case that: *“the facts in the Respondent’s Statement of Case are not disputed...the PAYE amounts owed in respect of the year 2023 detailed in Revenue’s Statement of case are not disputed”*. Consequently, there is no dispute that the Appellant was a director of and held more than 15% shareholding in the Company. The Commissioner has found this to be a material fact. Furthermore, in accordance with section 10(3) of the TCA 1997, the Appellant’s spouse was a “connected person”. Given this, the Commissioner is satisfied that under section 997A(1) of the TCA 1997, the Appellant and the Appellant’s spouse were individuals with a “material interest” in the Company, to whom section 997A of the TCA 1997 applied.

Credits for Tax Deducted from Emoluments

18. Section 997A(3) of the TCA 1997 provides (in summary) that no credit for tax deducted from emoluments paid by a company is to be given without documentary evidence of the tax having been remitted by the company to the Collector-General.
19. Section 997A(4) of the TCA 1997 provides (in summary) that any tax remitted in a year of assessment to the Collector-General which was deducted by the company from emoluments shall be treated as having been deducted from emoluments paid to persons other than individuals with a material interest, to whom section 997A applies, in priority to individuals with a material interest, to whom section 997A applies.
20. The Commissioner observes that section 997A(4) of the TCA 1997 applies to *“the tax remitted for that year of assessment”*. It therefore follows that the tax remitted by the Company to the Collector-General for the whole of the tax year 2023 was to be treated as having been deducted from emoluments paid to persons other than the Appellant and the Appellant’s spouse, in priority to tax deducted from emoluments paid by the Company to the Appellant and the Appellant’s spouse.
21. Section 997A(5) of the TCA 1997 sets out the manner in which tax remitted by the Company to the Collector-General deducted from emoluments paid to individuals with a material interest is to be treated. Section 997A(6) of the TCA 1997 provides (in summary) that if the tax to be treated as having been deducted from the emoluments of individuals with a material interest exceeds the actual tax deducted, the amount of credit to be given to individuals with a material interest shall not exceed the actual amount of tax deducted.
22. In this appeal, it is uncontested that the Company had outstanding employer PAYE/PRSI liabilities for the months of October and November 2023 in the amounts of €106,226.24 and €33,399.63. The Commissioner has found this to be a material fact.

23. In his Notice of Appeal, the Appellant submitted that: *“the level of the unpaid taxes was not at a level where non shareholder employee taxes were underpaid to the extent that a 100% withdrawal of [the Appellant’s] 2023 tax deduction credit should stand”*. The Appellant did not reiterate or elaborate on that point in his Statement of Case. More fundamentally, the Appellant, with the burden of proof on him, did not provide supporting evidence to show that in circumstances where the Company had outstanding PAYE/PRSI liabilities for the tax year 2023 in the amounts of €106,226.24 and €33,399.63, credits for tax deducted from emoluments paid by the Company in the tax year 2023 were nonetheless due to the Appellant and the Appellant’s spouse in the amounts claimed.
24. The Commissioner acknowledges the Appellant’s submission that there were mitigating factors, in addition to the history of tax compliance outlined. Nonetheless, the legislation does not confer any discretion or authority on the Commissioner to disapply the legislation on account of mitigating circumstances.
25. As noted above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the Assessment was incorrect in this case.
26. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the financial circumstances outlined on appeal. The Appellant was entitled to check whether the Assessment was correct. However, the Commissioner must make a determination in accordance with the legislation.

Determination

27. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to assess the Appellant to income tax in the amount of €46,845.25 for the tax year 2023. Accordingly, the Commissioner determines under section 949AK of the TCA 1997 that the assessment shall stand.
28. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

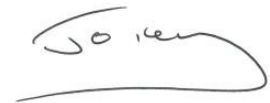
Notification

29. 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

30. 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.



Jo Kenny
Appeal Commissioner
11 March 2025