AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

107TACD2025

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeal Commission ("the Commission") by [redacted] ("the Appellant") against a decision of the Revenue Commissioners ("the Respondent") to refuse relief from income tax for investment in capital trades. The amount of relief at issue is €38,130.

2. The relief was refused on the basis that the investment was not in a qualifying company, as its fixed place of business was in Northern Ireland.

Background

3. [redacted]. The Appellant invested €93,000 in the company. In 2023, the Appellant submitted his income tax return for 2022, and made a claim for Start Up Capital Incentive relief ("SCI") on his investment.

4. The claim was refused by the Respondent. On 18 June 2024, it notified him that section 490 of the Taxes Consolidation Act 1997 as amended ("TCA 1997") provided that a qualifying company had to carry on relevant trading activities from a fixed place of

business in the State. It also stated that the Appellant had not provided a Statement of Qualification ("SOQ") that complied with the TCA 1997.

5. On 17 July 2024, the Appellant appealed against the Respondent's refusal to the Commission. The matter proceeded by way of a remote hearing in private on 28 February 2025. The Appellant represented himself. The Respondent was represented by its officers.

Legislation

6. Article 3 of the Constitution of Ireland states that

> "*1 It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island. Until then, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution.*
>
> *2 Institutions with executive powers and functions that are shared between those jurisdictions may be established by their respective responsible authorities for stated purposes and may exercise powers and functions in respect of all or any part of the island.*"

7. Section 2 of the Republic of Ireland Act 1948 states that "*It is hereby declared that the description of the State shall be the Republic of Ireland*."

8. Section 490 of the TCA 1997 states *inter alia* that

> *"(1) In this Part, a company shall be a qualifying company if -*
>
> *(a) it is incorporated in the State, in another EEA State or in the United Kingdom, and*
>
> *(b) it complies with this section and section 491.*
>
> *[…]*
>
> *(3) Throughout the relevant period -*
>
> *(a) the company shall -*

(i) be resident in the State, resident in the United Kingdom or resident in an EEA State other than the State and carry on, or intend to carry on, relevant trading activities from a fixed place of business in the State…"

9. Section 508A(1) of the TCA 1997 states that "*A qualifying company shall issue to a qualifying investor, or managers of a designated fund or qualifying investment fund, as the case may be, a statement of qualification in respect of a qualifying investment*."

Submissions

Appellant

10. The Appellant stated that he invested in the company, which is located in Northern Ireland. It has a website with an Irish domain [redacted]) which it uses to sell to customers throughout Ireland. Under the Windsor Framework Agreement between the European Union and the United Kingdom ("Windsor Framework"), Northern Ireland was recognised as occupying a unique position between the UK and EU, and there was a strong case for arguing that it should be considered as "*in the State*" for the purposes of investment relief.

11. The Respondent had failed to define what constitutes a "*fixed place of business*" in the digital economy. It had failed to assist the Appellant, despite numerous requests from him for it to provide a prescribed SOQ. Its refusal of the relief contradicted the principles of the Good Friday Agreement and the Windsor Framework. In support of his claim, the Appellant referred to *Inspector of Taxes v Kiernan* [1981] IR 117, *Revenue Commissioners v Doorley* [1933] IR 750, *Menolly Homes Ltd v Appeal Commissioners* [2010] IEHC 49, *Murphy v AG* [1982] IR 241 and *McGarry v Revenue Commissioners* (2009) ITR 131.

Respondent

12. The Respondent stated that the company's registered office was in Northern Ireland, its physical store was located in [redacted] and it maintained a web domain for trade across the island of Ireland. Therefore, its relevant trading activities were carried out from a fixed place of business in Northern Ireland and not from within the State. The company had also not issued a SOQ to the Appellant.

13. The Commission did not have jurisdiction to consider the wider constitutional and transnational arguments raised by the Appellant; *Lee v Revenue Commissioners* [2021]

IECA 18. The Appellant had submitted a form from HMRC titled "Enterprise Investment Scheme compliance certificate", but this did not satisfy the requirements for a SOQ.

Material Facts

14. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

    14.1. [redacted]. The company has a store in [redacted] and a website, [redacted] which it uses to sell to customers throughout Ireland. The company does not have a physical presence in the State.

    14.2. The Appellant invested €93,000 in the company. In his 2022 income tax return, he claimed SCI relief of €38,130 on his investment.

    14.3. The Respondent refused the claim on the basis that the company did not carry on relevant trading activities from a fixed place of business in the State.

Analysis

15. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [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.*"

16. Furthermore, in the recent judgment in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated *inter alia* that

    "97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake……..

    98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of

precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation……..”

17. This appeal concerns SCI, which is designed to assist start-up companies raising equity financing. It is a tax relief available to family members of existing shareholders. Section 490 of the TCA 1997 defines a “*qualifying company*” for the purposes of the relief. The issue at question in this appeal is the requirement that the qualifying company must be carrying on activities “*from a fixed place of business in the State*.”

18. It is not in dispute that the company is located in Northern Ireland, and that it operates a website with an Irish domain which it uses to sell to customers throughout the island of Ireland. The Appellant argued that the State should be read to include Northern Ireland, and/or that an Irish domain website constituted a fixed place of business in the State.

19. The Commissioner considers that this appeal concerns a question of statutory interpretation. In *Perrigo Pharma International DAC v McNamara* [2020] IEHC 552 (*“Perrigo”*), McDonald J summarised at paragraph 74 the principles of statutory interpretation to be applied in taxation cases:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *'Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible'.*"

20. Having regard to the above principles, the Commissioner is satisfied that this appeal cannot succeed. Regarding whether the State includes Northern Ireland, the Commissioner is satisfied that it clearly does not. The State comprises the 26 counties that are described as the Republic of Ireland, as per section 2 of the Republic of Ireland Act 1948.

21. While it goes without saying that the Commission's jurisdiction does not include constitutional interpretation, the Commissioner considers that the constitutional position is clearly enunciated by Article 3 of the Constitution, which states that, until a united Ireland is brought about, "*the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution*"; i.e. the 26 counties of the Republic of Ireland.

22. The Commissioner explained to the parties at the hearing, and repeats herein, that he has no jurisdiction to consider any arguments that section 490(3)(a)(i) of the TCA 1997 is unconstitutional, or is in breach of Ireland's obligations under the Windsor Framework or any other international agreement.

23. The Appellant's alternative or subsidiary argument was that the company's website should be classified as a fixed place of business in the State, as it uses an Irish (.ie) domain. The Commissioner notes that "*fixed place of business*" is not defined by section 490 of the TCA 1997. However, he is satisfied that the ordinary and plain meaning of the phrase is that the business must have a permanent, physical location in the State. He does not accept that a website could satisfy this requirement. Indeed, the very notion of cyberspace denotes a virtual rather than physical location[1].

24. Nor does the fact that the company's website has an Irish domain demonstrate compliance with section 490(3)(a)(i). The registry for .ie domain names states that applicants must have a "*real connection*" with the island of Ireland[2]. It is not in dispute that the company is located on the island of Ireland. However, this does not demonstrate that it has a fixed place of business in the State.

25. In coming to this view, the Commissioner has had regard to the judgment in *Revenue Commissioners v Doorley* [1933] IR 750, as quoted from in *Perrigo*, which provides that exemptions from taxation must be construed strictly. The Commissioner considers that a finding that an Irish domain website constituted a fixed place of business in the State would be "*to enlarge [the exemption's] operation beyond what the statute, clearly and without doubt and in express terms*" provides.

26. In conclusion, the Commissioner determines that the Respondent correctly refused the Appellant's claim for relief on the basis that the company does not have a fixed place of business in the State, as required by section 490 of the TCA 1997. While the parties

[1] https://www.oed.com/search/dictionary/?scope=Entries&q=cyberspace
[2] https://www.weare.ie/how-to-register-a-domain/#supporting_documentation

disagreed as to whether the document provided by the Appellant constituted a valid SOQ, the Commissioner considers this question moot, because the company was not a qualifying company in any event.

27. The Commissioner appreciates that this determination will be disappointing for the Appellant, who put forward a cogent and well-argued case. However, for the reasons set out above, the Commissioner is satisfied that the appeal must fail.

Determination

28. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct to refuse the Appellant's claim for SCI relief for the 2022 tax year in the amount of €38,130.

29. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

30. 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

31. 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.

Simon Noone
Appeal Commissioner
12 March 2025