AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

230TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against a determination of the Revenue Commissioners ("the Respondent") that the standard Relevant Contracts Tax ("RCT") rate of 20 per cent was to be deducted from relevant payments made to the Appellant, rather than the zero rate contended for by the Appellant.

2. The Commission notified the Appellant and the Respondent that the Appeal Commissioners 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 did so. Accordingly, this appeal is adjudicated without a hearing, in accordance with section 949U of the Taxes Consolidation Act, 1997 ("the TCA 1997").

3. When notifying the parties that the Appeal Commissioners intended to adjudicate on this appeal without a hearing, the parties were also afforded an opportunity to provide any further documentation. Neither party did so.

Background

4. RCT is a withholding tax that applies to relevant payments made by principal contractors to subcontractors in respect of, among other things, carrying out construction, forestry or meat processing operations. The rates of RCT are zero per cent, 20 per cent and 35 per cent.

5. In correspondence dated 13 February 2025 ("the Contract Confirmation"), the Respondent informed the Appellant that, among other things, it had been notified by [redacted] ("the Appellant's Customer") that the Appellant was a subcontractor on a relevant contract.

6. In the Contract Confirmation, the Respondent notified the Appellant that it had determined under section 530I of the TCA 1997 that the Appellant's rate of RCT as a subcontractor was the standard rate of 20 per cent. The Respondent also outlined that the standard rate would apply to relevant payments made to the Appellant by all principal contractors until a further determination was made by the Respondent.

7. The Contract Confirmation also informed the Appellant that it could request the Respondent to review that determination with a view to determining whether a lower rate (i.e. zero per cent, in this case) of RCT was appropriate, and that the Appellant had a right of appeal to the Commission. The Appellant did not appeal that determination to the Commission.

8. In correspondence dated 21 March 2025 ("the Notification of Determination"), the Respondent wrote to the Appellant to notify it that the Respondent had determined that the Appellant's rate of RCT as a subcontractor was 20 per cent. That determination was also made under section 530I of the TCA 1997.

9. As with the Contract Confirmation, in the Notification of Determination, the Respondent informed the Appellant that it could request a review of the determination by the Respondent, and that it had a right of appeal to the Commission.

10. No copies of any other correspondence between the parties have been provided to the Commission.

11. The Appellant, aggrieved by the Respondent's determination dated 21 March 2025, duly appealed to the Commission on 4 April 2025.

12. The Appellant submitted a notice of appeal and accompanying documentation in support of its appeal. In addition, the Appellant submitted a statement of case, and the

Respondent also submitted a statement of case. The Commissioner has considered all the documentation submitted by the parties.

Legislation

13. The legislation relevant to this appeal is set out below.

14. Section 530 of the TCA 1997, Interpretation (Chapter 2), provides, among other things, as follows:

"the principal" has the meaning assigned to it by the definition of "relevant contract";

"the contractor" has the meaning assigned to it by the definition of "relevant contract";

"subcontractor" means the contractor under a relevant contract where the principal under that contract is a person to whom section 530A applies;

"relevant contract" means a contract (not being a contract of employment, …) whereby a person (in this Chapter referred to as "the contractor") is liable to another person (in this Chapter referred to as "the principal") -

(a) to carry out relevant operations,

(b) to be answerable for the carrying out of such operations by others, whether under a contract with the contractor or under other arrangements made or to be made by the contractor, or

(c) to furnish the contractor's own labour or the labour of others in the carrying out of relevant operations or to arrange for the labour of others to be furnished for the carrying out of such operations,

… ;

"relevant operations" means construction operations, forestry operations or meat processing operations, as the case may be;

"construction operations" means operations of any of the following descriptions -

(a) the construction, alteration, repair, extension, demolition or dismantling of buildings or structures,

(b) the construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including walls, roadworks, power lines, telecommunication apparatus, aircraft runways, docks and harbours, railways,

inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage,

… ;

"deduction authorisation" has the meaning given to it in section 530D;

"relevant payment" means a payment made by a principal to whom section 530A applies in respect of a relevant contract;

15. Section 530E of the TCA 1997, Rates of tax, provides, among other things, as follows:

"(1) For the purpose of section 530D(2), the rate of tax -

(a) shall be zero where the Revenue Commissioners have made a determination that the subcontractor is a person to whom section 530G applies,

(b) shall be the standard rate (within the meaning of section 3) in force at the time of payment where the Revenue Commissioners have made a determination that the subcontractor is a person to whom section 530H applies,

(c) shall be 35 per cent where the Revenue Commissioners have made a determination that the subcontractor is a person to whom neither section 530G nor section 530H apply, and

…

(2) Any reference to a determination in subsection (1) is to the most recent determination made by the Revenue Commissioners under section 530I or as determined on appeal in accordance with that section, in respect of the subcontractor concerned."

16. Section 530G of the TCA 1997, Zero rate subcontractor, provides, among other things, as follows:

"(1) Subject to subsections (2) and (3), this section applies to a person in relation to whom the Revenue Commissioners are satisfied that the person -

(a) is or is about to become a subcontractor engaged in the business of carrying out relevant operations,

(b) carries on or will carry on business from a fixed place established in a permanent building and has or will have such equipment, stock and

other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(c) *properly and accurately keeps and will keep any business records to which section 886(2) refers and any other records normally kept in connection with such a business,*

(d) *has throughout the previous 3 years complied with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts, in relation to -*

(i) *the payment or remittance of taxes, interest and penalties,*

(ii) *the delivery of returns, and*

(iii) *the supply, on request, of accounts or other information to a Revenue officer,*

and

(e) *in the case of a person who was resident outside the State at some time during the previous 3 years, has throughout that period complied with all the obligations comparable to those mentioned in paragraphs (c) and (d) imposed by the laws of the country in which that person was resident at any time during that period.*

(2) *This section does not apply to a person -*

…

(b) *which is a company, unless each director of the company and any person who is either the beneficial owner of, or able, directly or indirectly, to control more than 15 per cent of the ordinary share capital of the company, are persons to which paragraphs (c) and (d) of subsection (1) refer,*

…

(d) *who, for good reason, the Revenue Commissioners consider unlikely to comply in the future with the obligations referred to in paragraph (c) or (d) of subsection (1), or*

…

(3) This section also applies to a person who satisfies the Revenue Commissioners that, in all the circumstances, the matter or matters referred to in subsection (1) or (2), which would otherwise cause such person not to be a person to whom this section applies, ought to be disregarded for the purposes of this section."

17. Section 530H of the TCA 1997, Standard rate subcontractor, provides, among other things, as follows:

"(1) Subject to subsection (2), this section applies to a person in relation to whom the Revenue Commissioners are satisfied that the person -

(a) is or is about to become a subcontractor engaged in the business of carrying out relevant operations,

(b) carries on or will carry on business from a fixed place established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(c) properly and accurately keeps and will keep any business records to which section 886(2) refers and any other records normally kept in connection with such a business,

(d) has throughout the previous 3 years complied substantially with the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts,

(e) in the case of a person who was resident outside the State at some time during the previous 3 years, has throughout that period complied with the obligations comparable to those mentioned in paragraph (c) and has throughout that period complied substantially with the obligations comparable to those mentioned in paragraph (d) imposed by the laws of the country in which that person was resident at any time during that period,

(f) has provided to the Revenue Commissioners whatever information is required by them to register the person for tax purposes, and

(g) is not a person to whom section 530G applies.

…

(3) This section does not apply to -

…

(b) a person if the Revenue Commissioners form an opinion that deductions from relevant payments at the standard rate of tax for the year of assessment will be insufficient to fully satisfy the income tax liability of the person for that year.

(4) This section also applies to a person who satisfies the Revenue Commissioners that, in all the circumstances, the matter or matters referred to in subsection (1), (2) or (3), which would otherwise cause such person not to be a person to whom this section applies, ought to be disregarded for the purposes of this section."

18. Section 530I of the TCA 1997, Determination of rates, provides, among other things, as follows:

"(1) For the purpose of establishing the rate of tax referred to in section 530E(1), the Revenue Commissioners shall, from time to time, determine whether a subcontractor is a person to whom section 530G applies, a person to whom section 530H applies or a person to whom neither section 530G nor 530H applies.

(2) Following a determination under subsection (1), the Revenue Commissioners shall notify the subcontractor of the determination and the rate of tax resulting from such determination.

(3) (a) A subcontractor aggrieved by a determination of the Revenue Commissioners made under subsection (1) in respect of that subcontractor may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that determination.

[…]"

Submissions

Appellant

19. In the grounds of its notice of appeal, among other things, the Appellant submitted:

"We have been advised that the reason given as to the determination of the 20% tax deduction rate as per the notice letter can be found on ROS or by contacting our local office.

No reasons whatsoever have been provided to us per ROS and we have also tried to contact north east business division Dundalk via phone but this telephone number is inoperable. We trust you can understand our frustration with all of this.

As we are in the process of embarking on a large project, contract ID [redacted] *enclosed, it is imperative for cash flow purposes that we can finally attain gross payment status.*

You will note from our Revenue record that since our work in Ireland first commenced back in [redacted] *2023 we have established ourselves as being fully compliant with our tax obligations regarding Corporation Tax, RCT & VAT.*

Therefore, upon this request, we can find no viable reason as to why the 0% tax rate would not be applicable in this case.

We take our tax responsibilities extremely seriously and again are fully compliant with our tax affairs in N. Ireland which we operate as gross payment contractors as granted by HMRC."

20. In its statement of case, along with reiterating the information contained in its notice of appeal, the Appellant also submitted:

"We have provided the Revenue Commissioners an exhaustive list of HMRC documentation to corroborate our tax compliance in NI. As stated, this has not been acknowledged."

Respondent

21. In the Respondent's statement of case, among other things, the Respondent submitted:

"… the appellant states that they see no reason why the 20% deduction rate has been applied to their company rather than zero.

Revenue have requested copies of letters from HMRC which would confirm that the company has been compliant with their filing and payment obligations for the last three years. The appellant states that HMRC do not supply such letters. Revenue have received many such letters from non-resident companies in the past.

The legislation covering this matter is Section 530G of the TCA 1997. This sets out the conditions under which the zero RCT rate may be awarded.

…

It is Revenue's position that the company does not meet these conditions and that the zero rate is not applicable. The company was registered for Corporation Tax on the [redacted] *2023 so does not have three years of compliance to be assessed. In the absence or letters of compliance which take into account the previous three years, 20% is determined to be the correct rate."*

Material Facts

22. Having considered the documentation submitted, the Commissioner makes the following findings of material fact:

    22.1. The Appellant is a company incorporated outside the State.

    22.2. The Appellant is tax resident outside the State.

    22.3. The Appellant was registered for corporation tax in the State on [redacted] 2023.

    22.4. The Appellant entered into a relevant contract with the Appellant's Customer, a principal contractor. The Appellant is a subcontractor for the purposes of that relevant contract, which relates to construction operations.

    22.5. In the Contract Confirmation, the Respondent notified the Appellant that it had determined under section 530I of the TCA 1997 that the Appellant's rate of RCT as a subcontractor was the standard rate of 20 per cent. The Appellant did not appeal that determination to the Commission.

    22.6. In the Notification of Determination, the Respondent wrote to the Appellant to notify it that the Respondent had determined that the Appellant's rate of RCT as a subcontractor was 20 per cent. That determination, which is the subject of this appeal, was also made under section 530I of the TCA 1997.

    22.7. On 21 March 2025, being the date of the Notification of Determination, the Appellant did not have a three-year tax compliance history with the Respondent.

    22.8. Save for the name of one director, the Appellant provided no information to the Commission regarding its directors or any person who was a beneficial owner of, or able, directly or indirectly, to control more than 15 per cent of the ordinary share capital of the company.

22.9. The information before the Commission contains no suggestion that the Appellant has failed, or is likely to fail, to keep proper business records. The Respondent does not contend otherwise.

22.10. The Respondent requested that the Appellant provide documentation issued by the United Kingdom ("UK") tax authority, HM Revenue & Customs, evidencing compliance with its UK tax obligations for the preceding three years. The Appellant did not provide this information.

22.11. On 4 April 2025, the Appellant duly appealed to the Commission.

Analysis

23. The burden of proof in this appeal rests on the Appellant, who must establish that the Respondent erred in determining that relevant payments made to it were subject to deduction at the standard rate of RCT rather than at the zero rate.

24. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners and Anor.* [2010] IEHC 49, Charleton J stated at paragraph 22, among other things, 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."*

25. The standard of proof applicable in this appeal is the balance of probabilities.

26. The sole issue for determination in this appeal is the rate of RCT applicable to relevant payments made to the Appellant.

27. Section 530E of the TCA 1997 provides for three rates of RCT: zero per cent, the standard rate of 20 per cent and 35 per cent. Of the three rates, the zero per cent rate is the most advantageous for a subcontractor, as relevant payments are received in full.

28. Where the zero rate applies, section 530G of the TCA 1997 describes the subcontractor as a 'zero rate subcontractor', and section 530H of the TCA 1997 describes the subcontractor as a 'standard rate subcontractor' where the standard rate applies. Where neither the zero nor the standard rate applies, the rate of 35 per cent applies.

29. For the zero rate to apply, a number of conditions must be met, unless the Respondent exercises the discretion afforded to it by section 530G(3) of the TCA 1997 to disregard a matter or matters that would otherwise prevent the person from qualifying.

30. It is not in dispute that the Appellant meets the conditions in section 530G(1)(a) and (b) of the TCA 1997, as it is a subcontractor engaged in carrying out relevant operations in the State.

31. The Respondent does not dispute that the Appellant properly and accurately keeps and will keep the required business records as stipulated in 530G(1)(c) of the TCA 1997.

32. Section 530G(1)(d) of the TCA 1997 requires that the subcontractor must have, throughout the <u>previous 3 years</u>, complied with all its obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts, in relation to the payment or remittance of taxes, interest and penalties; the filing of returns; and the supply, on request, of accounts or other information to an officer of the Respondent.

33. The Appellant does not have a three-year tax compliance history in the State, having only registered for corporation tax on [redacted] 2023. Accordingly, it cannot meet the necessary condition in section 530G(1)(d) of the TCA 1997 for the application of a zero rate of RCT. That finding alone is sufficient to establish that the Appellant does not meet all the conditions for the zero rate to apply.

34. Section 530G(1)(e) of the TCA 1997 provides that where the subcontractor has been resident outside the State at some time during the previous 3 years, the subcontractor must demonstrate full compliance with comparable record-keeping and tax obligations in that other jurisdiction.

35. The Commissioner acknowledges the Appellant's stated compliance with its tax obligations in the UK, but no evidence has been adduced to the Commission to substantiate it. The Commissioner has not had the benefit of copies of '*the exhaustive list of HMRC documentation to corroborate our tax compliance in NI*', which is referred to in the Appellant's statement of case.

36. As the Appellant did not provide '*copies of letters from HMRC which would confirm that the company has been compliant with their filing and payment obligations for the last three years*', as stated in the Respondent's statement of case, the Respondent does not appear to have been satisfied that this condition was met.

37. In any event, the Appellant has not established before the Commission that this condition is met.

38. Section 530G(2)(b) of the TCA 1997 provides that the subcontractor cannot qualify for the zero rate unless all its directors, and any person with a beneficial ownership or control

of more than 15 per cent of its ordinary share capital, satisfy the record-keeping and tax obligations in 530G(1)(c) and (d) of the TCA 1997.

39. As the Commissioner has not been provided with any relevant information in respect of such persons or matters, the Appellant has not shown that this provision does not apply.

40. The Commissioner notes that section 530G(3) of the TCA 1997 provides that the Respondent may, in all the circumstances, disregard a matter or matters that would otherwise prevent the subcontractor from qualifying for the zero rate. The Respondent did not exercise such discretion in this case.

41. The Commissioner finds that the Respondent was correct to conclude that the zero rate of RCT did not apply to the Appellant.

Determination

42. Having considered all the documentation submitted by the parties, for the reasons set out above, the Commissioner determines that the Appellant has not shown, on the balance of probabilities, that the Respondent erred in determining that relevant payments made to it were subject to deduction at the standard rate of RCT rather than at the zero rate.

43. The Respondent's determination of 21 March 2025 shall stand.

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

45. The Commissioner recognises that this determination may be disappointing for the Appellant and has regard to the business circumstances described on appeal. The Commissioner is, however, bound to apply the provisions of the legislation.

Notification

46. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular sections 949AJ(5) and 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

47. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Conor Walsh
Appeal Commissioner
29 August 2025