AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

54TACD2025

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision of the Revenue Commissioners (hereinafter the "Respondent") disallowing an application for a tax credit for Research and Development (hereinafter "R&D") expenditure for the accounting period ending 30 June 2022.

2. The total amount of tax in dispute is €195,502.00.

Background

3. [redacted] (hereinafter the "Appellant") is a limited liability company involved in [redacted].

4. On 14 July 2023 the Appellant submitted a Corporation Tax return Form CT1 (hereinafter the "CT1") to the Respondent for the period ending 30 June 2022.

5. In the "*Research & Development Credit and Allowances*" section of the CT1, the Appellant claimed a total R&D tax credit of €195,502.00 for the year 2022. The CT1 claimed the following repayment amounts:

    5.1. a first instalment repayment amount relating to the year ending 30 June 2022 of €64,516 pursuant to the provisions of section 766(4B)(b)(i) of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997").

    5.2. a second instalment of an R&D tax credit repayment in relation to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997.

    5.3. a third instalment of an R&D tax credit repayment in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997.

6. The total R&D tax credit repayment amount claimed for the year ending 30 June 2022 in the CT1 returned by the Appellant on 14 July 2023 was €128,007.

7. In December 2023 the Appellant's tax agent wrote to the Respondent via the Respondent's My Enquiries portal as follows:

    "*We refer to the submission of our client's form CT1 for the year ended 30th June 2022 and note that the R&D refund claim amount has not yet been refunded.*

    Please note that the delay of 2 weeks beyond the deadline of 30th June 2023 for filing such R&D refund claims is due to the fact that in mid June 2023 I was unavoidably and

unexpectedly on an extended period of sick leave and as a result did not get the filing submitting until my return to the office on 14th July 2023. I attach herewith a copy of the Doctor's certificate in support.

In the circumstances, we kindly request that the refund be allowed on this occasion."

8. Following the correspondence from the Appellant seeking an update on the repayment, the Respondent reviewed the Appellant's claim for an R&D tax credit contained in the CT1 for the year ending 2022.

9. On foot of the review, the Respondent issued a Notice of Amended Assessment to Corporation Tax for the period ending 30 June 2022 which disallowed the Appellant's claimed R&D tax credit for the year ending 30 June 2022 in the amount of €195,502. The following R&D tax credit repayment amounts were disallowed by the Respondent:

    9.1. the first instalment repayment amount relating to the year ending 30 June 2022 of €64,516 pursuant to the provisions of section 766(4B)(b)(i) of the TCA 1997;

    9.2. the second instalment repayment amount relating to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997, despite the first instalment having been repaid by the Respondent for the period ending 30 June 2021; and

    9.3. the third instalment repayment amount in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997, despite the first instalment having been repaid by the Respondent for the period ending 30 June 2020 and the second instalment having been repaid by the Respondent for the period ending 30 June 2021.

10. The Appellant submitted a Notice of Appeal to the Commission on 1 May 2024. In addition, both parties submitted a Statement of Case and an Outline of Arguments along with supporting documentation comprising of the Notice of Amended Assessment, the My Enquiries correspondence between the parties relating to the R&D tax credit as well as a medical certificate relating to the Appellant's Tax Agent's illness dated 19 June 2023.

11. On 6 January 2025, the Respondent wrote to the Commission including an amendment to its Outline of Arguments in which it stated:

    "Having reviewed the prior decision, Revenue are satisfied that the refund for the 2nd and 3rd Instalments are in order and a total of €63,491 will be refunded in the coming weeks."

This, then, is an appeal in relation to the Respondent's disallowance of the Appellant's claim for a tax credit for R&D expenditure for the accounting period ending 30 June 2022.

12. The oral hearing of this appeal took place on 10 January 2025.

Legislation and Guidelines

13. The legislation relevant to this appeal is as follows:

Section 766 of the TCA 1997 – "*Tax credit for research and development expenditure*":

"(5) Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred."

Submissions

Appellant's Submissions

14. The Appellant submitted the following ground of appeal in its Notice of Appeal:

"Our grounds for appeal are the unexpected and unforeseen illness of staff member responsible for the submissions which coincided with the 30th June deadline date. Doctor's certification was submitted in support of same. The submission was filed immediately on the return of the staff member from illness.

Please see the attached 'my enquiries email stream' and other documents in support of the above"

15. The Appellant submitted the following in its Statement of Case:

"Form CT1 for the year ended 30th June 2022 containing a claim for €128,007 in R&D credits, was submitted on the 14th July 2023.

Revenue processed an assessment in accordance with the submission but disallowed the refund on the basis that under S 766(5) TCA 1997, the submission was late.

We contacted Revenue, outlining a "force majeure", where an unexpected and unforeseen illness of the staff member responsible for the submissions coincided with the 30th June deadline date and prevented him from reallocating the submission assignment. The submission was filed immediately on the return of the staff member from illness. Subsequently doctors certification was submitted to Revenue in support of same.

Revenue rejected our plea to allow the refund as a one off concession quoting S766(5) TCA which states:

> *"Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim is incurred",*

and claimed,

> *"that the use of the word "shall" indicates that the timeframe for application is mandatory and that no concessions or exceptions are permitted in relation to this timeframe. Therefore, an application must be made within the twelve-month timeframe to be valid."*

We disagree with this assertion on the following bases;

The word 'shall' is ambiguous and could in no way imply or indicate a timeframe to be mandatory (as compared to a word like, for example 'must'). (Oxford English Dictionary definition - 'shall' = expressing a strong assertion or intention)

In addition, the word is used throughout the taxes consolidation acts and on many occasions in the past, we have sought concessions for clients which have been granted.

There is no legislative reference to define the word 'shall' in the tax acts.

There is no legal precedence that deals with the word 'shall' in S766(5) being cause for precluding a concession or exception being permitted in relation to the timeframe contained therein.

The assertion made by Revenue is made based on an interpretation of a word 'shall' in S.766(5), and in our view, this is a misinterpretation of this word, and therefore Revenue have the power to grant a concession or exception to allow the refund to be issued."

16. In oral submissions, the Appellant repeated the arguments made in the Statement of Case.

17. The Appellant stated that R&D comprises 90% of its business and the refusal of the R&D tax credit claim for the period ending 30 June 2022 has a significant negative impact on its business. It was submitted that the Appellant has an impeccable record of returning its CT1 forms on time to the Respondent save and except for this instance where the return was two weeks late.

Respondent's Submissions

18. The Respondent submitted that the provisions of section 766(5) of the TCA 1997 are clear and that the use of the word "*shall*" in that section indicates that the 12 month timeframe for application for an R&D tax credit is mandatory and that no concessions or exceptions are permitted in relation to that timeframe.

Material Facts

19. The material facts are not in dispute in this appeal and the Commissioner accepts the following as material facts:

    19.1. The Appellant is a limited liability company involved in [redacted].

    19.2. On 14 July 2023 the Appellant submitted a CT1 to the Respondent for the period ending 30 June 2022.

    19.3. In the "*Research & Development Credit and Allowances*" section of the CT1, the Appellant claimed a total R&D tax credit of €195,502.00 for the year 2022. The CT1 claimed the following repayment amounts:

        19.3.1. a first instalment repayment amount relating to the year ending 30 June 2022 of €64,516 pursuant to the provisions of section 766(4B)(b)(i) of the TCA 1997;

        19.3.2. a second instalment of an R&D tax credit repayment in relation to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997; and

        19.3.3. a third instalment of an R&D tax credit repayment in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997.

    19.4. The total R&D tax credit amount claimed for the year ending 30 June 2022 in the CT1 returned by the Appellant on 14 July 2023 was €128,007.

    19.5. In December 2023 the Appellant's tax agent wrote to the Respondent via the Respondent's My Enquiries portal as follows:

        "We refer to the submission of our client's form CT1 for the year ended 30th June 2022 and note that the R&D refund claim amount has not yet been refunded.

Please note that the delay of 2 weeks beyond the deadline of 30th June 2023 for filing such R&D refund claims is due to the fact that in mid-June 2023 I was *unavoidably and unexpectedly on an extended period of sick leave and as a result did not get the filing submitting until my return to the office on 14th July 2023. I attach herewith a copy of the Doctor's certificate in support.*

In the circumstances, we kindly request that the refund be allowed on this occasion."

19.6. Following the correspondence from the Appellant seeking an update on the repayment, the Respondent reviewed the Appellant's claim for an R&D tax credit contained in the CT1 for the year ending 2022.

19.7. On foot of the review, the Respondent issued a Notice of Amended Assessment to Corporation Tax for the period ending 30 June 2022 which disallowed the Appellant's claimed R&D tax credit for the year ending 30 June 2022 in the amount of €195,502. The following R&D tax credit repayment amounts were disallowed by the Respondent:

19.7.1. the first instalment repayment amount relating to the year ending 30 June 2022 of €64,516 pursuant to the provisions of section 766(4B)(b)(i) of the TCA 1997;

19.7.2. the second instalment repayment amount relating to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997, despite the first instalment having been repaid by the Respondent for the period ending 30 June 2021; and

19.7.3. the third instalment repayment amount in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997, despite the first instalment having been repaid by the Respondent for the period ending 30 June 2020 and the second instalment having been repaid by the Respondent for the period ending 30 June 2021.

19.8. The Appellant submitted a Notice of Appeal to the Commission on 1 May 2024.

19.9. On 6 January 2025, the Respondent wrote to the Commission including an amendment to its Outline of Arguments in which it stated:

"Having reviewed the prior decision, Revenue are satisfied that the refund for the 2nd and 3rd Instalments are in order and a total of €63,491 will be refunded in the coming weeks."

Analysis

20. As with all appeals before the Commission, the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

> "*This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable*."

21. In addition to the above, 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 where it stated 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…"*

22. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.

23. Section 766 of the TCA 1997 is entitled "*Tax credit for research and development expenditure*" and makes provision for tax credits to companies that have incurred expenditure on R&D and for repayments to be made to companies that come within the provisions of that section.

24. Section 766(5) of the TCA 1997 provides that any claim for an R&D tax credit "…**shall** be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred" (emphasis added).

25. There is no dispute between the parties that the Appellant submitted its claim for an R&D tax credit for the period ending 30 June 2022 on 14 July 2023. It is also not in dispute that the date of 14 July 2023 is two weeks outside of the 12 month period specified in section 766(5) of the TCA 1997.

26. The foundation of the Appellant's appeal is that it submits that the meaning of the word "*shall"* is ambiguous and can in no way imply or indicate a timeframe to be mandatory. In support of this the Appellant referred to the Oxford English Dictionary which it submits defines the word "*shall*" as meaning "*expressing a strong assertion or intention*".

27. The Respondent, on the other hand referred the Commissioner to the definition of the word "*shall*" contained in the Cambridge English Dictionary as meaning "*used to say that something certainly will or must happen*".

28. In his decision in *Revenue Commissioners v. Doorley* [1933] I.R. 750 Kennedy C.J. stated the following in relation to the interpretation of taxation statutes where they relate to exemptions from tax at page 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, except 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".*

29. In addition, in the judgment of the High Court in Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General [2020] IEHC 552 (hereinafter "*Perrigo*"), McDonald J, reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

> *"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, except 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".

These principles have been confirmed in the more recent decision of the Supreme Court in its decision in *Heather Hill Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43.

30. The Commissioner has carefully considered the meaning of the word "*shall*" in the context of section 766 of the TCA 1997. Whilst the parties did not submit copies of the Oxford English Dictionary or Cambridge English dictionary definitions on which they seek to rely, the Commissioner has also considered the following dictionary definitions of the word "*shall*" when considering this appeal:

31. Collins Dictionary which defines "*shall*" as meaning "*…to indicate that something must happen, usually because of a rule or law*"[1];

32. Britannia.com which defines "shall" as meaning "used in laws or rules to say that something is required".[2]

33. Having considered the above definitions, the Commissioner finds that the meaning of the word "*shall*" in section 766(5) of the TCA 1997 is plain and its meaning is self-evident. The Commissioner finds that the word "shall" in 766(5) of the TCA 1997 means that the application for an R&D tax credit must be, and is required to be, made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred. In this appeal, this means that the application for an R&D tax credit must have been, and was required to have been, made on or before 30 June 2023.

34. The Commissioner notes and accepts that the Appellant's tax agent was ill for the period from 19 June 2023 to 14 July 2023, however the applicable legislation does not allow the Commissioner to take such illness into consideration when coming to her determination.

[1] https://www.collinsdictionary.com/dictionary/english/shall
[2] https://www.britannica.com/dictionary/shall

Conclusion

35. As the Appellant's application for an R&D tax credit for the period ending 30 June 2022 was made on 14 July 2022, this means that a valid claim for an R&D tax credit for the period ending 30 June 2022 has not been made by the Appellant.

36. The Commissioner notes that the Respondent has stated in its correspondence of 6 January 2025 that it is satisfied that the following refunds in the amount of €63,491.00 are to be made to the Appellant:

    36.1. the second instalment of an R&D tax credit repayment in relation to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997.

    36.2. the third instalment of an R&D tax credit repayment in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997.

Determination

37. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to disallow the Appellant's claim for an R&D tax credit for the period ending 30 June 2022.

38. The Commissioner determines that the Appellant has succeeded in showing that the Respondent was incorrect to disallow the Appellant's claim for the repayment of €63,491.00 in respect of:

    38.1. the second instalment of an R&D tax credit repayment in relation to the year 2021 in the amount of €44,783 pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997.

    38.2. the third instalment of an R&D tax credit repayment in relation to the year 2020 in the amount of €18,708 pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997.

39. As a result of the above, the Commissioner determines that the Notice of Amended Assessment to Corporation Tax issued by the Respondent for the period ending 30 June 2022 shall therefore be reduced by €63,491.00.

40. The Commissioner has every sympathy with the position that the Appellant is in. The Commissioner accepts that this determination will have a negative impact on the

Appellant's business. However, the Commissioner has no discretion in relation to this matter.

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

Notification

42. 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

43. 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.

Clare O'Driscoll
Appeal Commissioner
4 February 2025