



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

57TACD2025

Between

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) pursuant to section 530I of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) against a determination by the Revenue Commissioners (“the Respondent”) that his relevant contracts tax (“RCT”) deduction rate was determined to be 35%.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. RCT is a withholding tax that applies to certain payments made by principal contractors to subcontractors in certain specified industries. The rates of RCT are 0%, 20% and 35%, and the appropriate rate is determined by the Respondent following a risk assessment made pursuant to the relevant provisions of the TCA 1997.
4. On 13 July 2024, the Respondent notified the Appellant that his rate as a subcontractor had been determined to be 35%. The reason given was that the Appellant had

outstanding income tax ("IT") returns. On 9 August 2024, the Appellant appealed against the determination to the Commission, and stated that he wanted to be placed on the 20% rate.

5. On 14 November 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without an oral hearing, and the Appellant submitted additional documentation. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.
6. On 19 December 2024, having reviewed the documents provided, the Commissioner was of the view that the Respondent had not fully addressed the relevant statutory provisions in its Statement of Case. The Respondent was directed to provide additional information, which it did. The Appellant was afforded an opportunity to reply to the Respondent's additional documentation.

Legislation

7. Section 530E(1) of the TCA 1997 provides that

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

8. Section 530G of the TCA 1997 concerns zero rate subcontractors. Section 530H concerns 20% rate subcontractors. Section 530H(1) provides that

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

Submissions

Appellant

9. In various written submissions to the Commission, the Appellant stated that

"I was set up as self employed by an employer a few years back at the time. He set me up on 20%. I assumed all my taxes would be paid out of this. In regards to last 2 years I haven't worked a whole pile due to personal issues. I was always 20%..."

I do not have an accountant and did not have any returns to make..."

10. In reply to the Respondent's submission that he had not filed IT returns, he stated that

"I will look into this. 2019 I worked 6 months self-employed, 2020 and 2021 I worked 2 months (covid). I was refused the full covid payments as I was newly self employed but now I must make returns for the time period? 2022/23 I worked full time. 2024 I worked [maybe] 5 months. I am starting back as an employee next week. Does this mean I am still going to be paying 35% tax? I have not made more than 30k per year in the last 5 years so this rate is totally unjustified... my starting rate with my new employer is €16 per hour. I couldn't afford paying 35% on this with cost of living, rent, etc."

Respondent

11. In written submissions, the Respondent stated that

"Please be advised that [the Appellant] is registered for RCT and Income tax with effect from 01/03/2019.

As per our record, [the Appellant] has been in receipt of income as a subcontractor, each year since 2019 to date.

[The Appellant] did not submit income tax returns for any of the years since the registration date.

At this stage, [the Appellant] has five returns outstanding under Income tax, those are for the years 2019, 2020, 2021, 2022 and 2023.

Filing reminder letters have been sent to [the Appellant] in this regard.

Due to reasons of non-compliance, [the Appellant's] RCT rate has been set to 35%."

12. The Respondent further submitted that

"As the Appellant did not file or submit any of the Income tax returns since the commencement of trade and date of registration for Income tax and RCT (year 2019), Revenue is precluded from applying a standard RCT rate of 20%, since the criteria for the standard RCT rate, as imposed by legislation, has not been satisfied.

The Appellant currently has outstanding Income tax returns for the years 2019, 2020, 2021, 2022 and 2023.

Revenue will be in position to reconsider the RCT rate only after the Income tax record has been brought up to date, meaning when all outstanding returns have been filed, and any potential liability, interest or other charges have been paid in full."

Material Facts

13. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 13.1. The Appellant registered for income tax and RCT in 2019.
 - 13.2. The Appellant has not filed income tax returns for 2019, 2020, 2021, 2022 and 2023.
 - 13.3. On 13 July 2024, the Respondent notified the Appellant that his rate as a subcontractor had been determined to be 35%. The reason given was that the Appellant had outstanding income tax returns.

Analysis

14. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to determine his RCT rate at 35% rather than 20%. 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.*"
15. Section 530E(1)(c) of the TCA 1997 provides that a subcontractor's rate of RCT shall be 35% where the Respondent determines that neither section 530G nor section 530H are applicable. Section 530G concerns zero rate subcontractors. Section 530H concerns standard rate subcontractors.
16. In this appeal, the Respondent determined that the Appellant's rate of RCT would be 35%. The Appellant has stated that he wants to be placed on the standard rate, i.e. 20%. Therefore, the provisions of section 530H of the TCA 1997 are most relevant.
17. Section 530H(1) sets out a number of matters about which the Respondent must be satisfied in order to determine that a subcontractor should be placed on the standard RCT rate. Subsection (1)(d) requires the Respondent to be satisfied that the subcontractor

“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.”

18. The Respondent has contended, and the Appellant has not denied, that the Appellant registered for income tax and RCT in 2019. Every person registered for income tax is obliged to make an annual return; section 959I of the TCA 1997. However, the Appellant has not denied the Respondent's contention that he has not filed any income tax returns since 2019.
19. In the circumstances, the Commissioner finds as fact that the Appellant has not submitted any income tax returns since registering for income tax in 2019. Consequently, he finds that the Respondent was correct to determine that the Appellant had not throughout the previous three years complied substantially with the obligations imposed by the Tax Acts.
20. Therefore, the Commissioner is satisfied that the Respondent correctly determined that the Appellant did not satisfy the requirements to be placed on the standard RCT rate. As a result, section 530E applies so that the correct rate of RCT applicable to the Appellant is 35%.
21. The Commissioner appreciates that this determination will be disappointing for the Appellant. However, he is satisfied that the Respondent's determination of the appropriate RCT rate was correct, and therefore the appeal is unsuccessful.

Determination

22. 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 in determining the Appellant's rate of RCT to be 35%.
23. 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.

Notification

24. 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

25. 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
10 February 2025