AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

28TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against Notices of Amended Assessment to income tax for the years 2020 and 2021 issued by the Revenue Commissioners (from here on referred to as the "Respondent") on 26 February 2025.

2. The amount of tax at issue is €48,698.63.

Background

3. [redacted] (from here on referred to as the "Appellant") was, from 16 June 2020 to 29 March 2024, a director but not a shareholder of [redacted] (from here on referred to as "Company 1").

4. Company 1 was controlled by [redacted] (from here on referred to as the "Controlling Company") of which the Appellant was also a director but not a shareholder.

5. In 2020 and 2021, Company 1 and the Controlling Company had three shareholders: the Appellant's mother who held 34% of the shares and two of the Appellant's brothers who each held 33% of the shares.

6. During the years 2020 and 2021, the Appellant was an employee of Company 1.

7. On 17 November 2021, the Appellant submitted his Form 11 self-assessed income tax return for 2020 to the Respondent which showed a liability to income tax of €5,554.64.

8. The Form 11 for 2020 contained a return of income from the Appellant's employment with Company 1 of €86,634 with a claim for credit for income tax of €24,604.12 and Universal Social Charge of €3,721.00.

9. On 16 November 2022, the Appellant submitted his Form 11 self-assessed income tax return for 2021 to the Respondent which showed a liability to income tax of €7,332.72.

10. The Form 11 for 2021 contained a return of income from the Appellant's employment with Company 1 of €86,634 with a claim for credit for income tax of €24,094.51 and Universal Social Charge of €3,721.00.

11. The Form 11 for 2021 also indicated that the Appellant was employed by the Controlling Company but that he had not received income from that employment in 2021.

12. Company 1 ceased trading in November 2022 and went in to liquidation in January 2023 with outstanding liabilities to income tax, Pay Related Social Insurance and Universal Social Charge (from here on collectively referred to as PREM) as follows:

    12.1. 2020 – total liability to PREM of €307,000, €145,000 of which was returned to the Respondent leaving an outstanding liability of €162,000;

    12.2. 2021 – total liability to PREM of €322,000, €170,000 of which was returned to the Respondent leaving an outstanding liability of €152,000.

13. Following a review of the Appellant's returns for the years 2020 and 2021, on 26 February 2025 the Respondent issued Notices of Amended Assessment to income tax for the years 2020 and 2021 to the Appellant.

14. The Notice of Amended Assessment for the year 2020 showed a liability of €24,604.12.

15. The Notice of Amended Assessment for the year 2021 showed a liability of €24,094.51.

16. In each of the Notices of Amended Assessment, the Respondent removed the claimed credits in relation to income tax on the basis that Company 1 had outstanding liabilities to PREM which had not been returned.

17. The oral hearing of this appeal took place remotely on 15 October 2025.

Legislation and Guidelines

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

    Section 10 of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997") – "Connected persons"

    "(1) In this section—

    "close company" has the meaning assigned to it by sections 430 and 431;

    "company" has the same meaning as in section 4(1);

    "control" shall be construed in accordance with section 432;

    "relative" means brother, sister, ancestor or lineal descendant and, for the purposes of the Capital Gains Tax Acts, also means uncle, aunt, niece or nephew;

    "settlement" includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property;

"settlor", in relation to a settlement, means any person by whom the settlement was made, and a person shall be deemed for the purposes of this section to have made a settlement if the person has made or entered into the settlement directly or indirectly and, in particular (but without prejudice to the generality of the preceding words), if the person has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the context otherwise requires, any question whether a person is connected with another person shall be determined in accordance with subsections (3) to (8) (any provision that one person is connected with another person being taken to mean that they are connected with one another).

(3) 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.

(4) A person in the capacity as trustee of a settlement shall be connected with—

(a) any individual who in relation to the settlement is a settlor,

(b) any person connected with such an individual, and

(c) a body corporate which is deemed to be connected with that settlement, and a body corporate shall be deemed to be connected with a settlement in any accounting period or, as the case may be, year of assessment if, at any time in that period or year, as the case may be, it is a close company (or only not a close company because it is not resident in the State) and the participators then include the trustees of or a beneficiary under the settlement.

(5) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person shall be connected with any person with whom such person is in partnership, and with the spouse or civil partner or a relative of any individual with whom such person is in partnership.

(6) A company shall be connected with another company—

(a) *if the same person has control of both companies, or a person (in this paragraph referred to as "the first-mentioned person") has control of one company and persons connected with the first-mentioned person, or the first-mentioned person and persons connected with the first-mentioned person, have control of the other company, or*

(b) *if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom such member is connected.*

(7) *A company shall be connected with another person if that person has control of the company or if that person and persons connected with that person together have control of the company.*

(8) *Any 2 or more persons acting together to secure or exercise control of, or to acquire a holding in, a company shall be treated in relation to that company as connected with one another and with any person acting on the direction of any of them to secure or exercise control of, or to acquire a holding in, the company."*

<u>Section 997A of the TCA 1997 – "*Credit in respect of tax deducted from emoluments of certain directors*"</u>

"(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."*

Witness Evidence

The Appellant

19. The Commissioner heard evidence from the Appellant where he stated that, whilst he had been a director of both Company 1 and the Controlling Company in the years 2020 and 2021, he had not been a shareholder.

20. He stated that he had not been responsible for, and did not control, payments being made from Company 1's bank account.

21. He stated that he had been a full-time employee of Company 1 in 2020 and 2021 and that in November 2022 Company 1 ceased trading. Company 1, he stated, went into liquidation in January 2023.

22. The Appellant stated that, following Company 1 ceasing trading, he had experienced significant mental health difficulties which required hospitalisation and which requires ongoing treatment from his treating medical professionals.

23. He stated that he had been unemployed for 19 months and had been forced to rely on illness benefit payments from December 2022 until June 2024 at which time he started his own business.

24. He stated that he feels that, as he was not a shareholder in either Company 1 or the Controlling Company, it is unfair that the Respondent is seeking to recover tax from him for 2020 and 2021.

25. He stated that he is not in a position to repay the money sought by the Respondent.

Submissions

Appellant's submissions

26. The Appellant was represented by his Tax Agent who submitted that:

    26.1. In 2020 and 2021, the Appellant was a director of Company 1 and the Controlling Company;

    26.2. The Appellant was not a shareholder in Company 1 or in the Controlling Company;

    26.3. It is accepted that Company 1 has outstanding liabilities to PREM for the years 2020 and 2021 in the amounts of €162,000 and €152,000 respectively;

    26.4. The Appellant feels that, as he was not a shareholder in either Company 1 or of the Controlling Company in 2020 and 2021, and as he did not control payments from the bank accounts of either entity, it is unfair that the Respondent is seeking to deny him credits in relation to taxes which were deducted on his payslips for those years;

    26.5. The Appellant has suffered from significant mental health difficulties since November 2022;

    26.6. The Appellant is not in a position to repay the tax amount sought by the Respondent.

Respondent's submissions

27. The Respondent was represented by two officials from its Business Division who submitted that:

    27.1. In 2020 and 2021, the Appellant was a director of Company 1 and of the Controlling Company;

    27.2. The Appellant was not a shareholder in Company 1 or of the Controlling Company;

    27.3. Company 1 has outstanding liabilities to PREM for the years 2020 and 2021 in the amounts of €162,000 and €152,000 respectively;

    27.4. As a result of the outstanding liabilities to PREM from Company 1 for the years 2020 and 2021, and as a result of the fact that Appellant is a connected person to the shareholders of Company 1 and the Controlling Company, the provisions of section 997A of the TCA 1997 apply and that no tax credit for tax deducted from the payments made by Company 1 to the Appellant can be given to the Appellant.

Material Facts

28. The material facts are not at issue in this appeal and the Commissioner accepts the following as material facts:

    28.1. The Appellant was, from 16 June 2020 to 29 March 2024, a director but not a shareholder of Company 1.

    28.2. Company 1 was controlled by the Controlling Company of which the Appellant was also a director but not a shareholder.

    28.3. In 2020 and 2021, Company 1 and the Controlling Company had three shareholders: the Appellant's mother who held 34% of the shares and two of the Appellant's brothers who each held 33% of the shares.

    28.4. During the years 2020 and 2021, the Appellant was an employee of Company 1.

    28.5. On 17 November 2021, the Appellant submitted his Form 11 self-assessed income tax return for 2020 to the Respondent which showed a liability to income tax of €5,554.64.

28.6. The Form 11 for 2020 contained a return of income from the Appellant's employment with Company 1 of €86,634 with a claim for credit for income tax of €24,604.12 and Universal Social Charge of €3,721.00.

28.7. On 16 November 2022, the Appellant submitted his Form 11 self-assessed income tax return for 2021 to the Respondent which showed a liability to income tax of €7,332.72.

28.8. The Form 11 for 2021 contained a return of income from the Appellant's employment with Company 1 of €86,634 with a claim for credit for income tax of €24,094.51 and Universal Social Charge of €3,721.00.

28.9. The Form 11 for 2021 also indicated that the Appellant was employed by the Controlling Company but that he had not received income from that employment in 2021.

28.10. Company 1 ceased trading in November 2022 and went in to liquidation in January 2023 with outstanding liabilities to PREM as follows:

28.10.1. 2020 – total liability to PREM of €307,000, €145,000 of which was returned to the Respondent leaving an outstanding liability of €162,000;

28.10.2. 2021 – total liability to PREM of €322,000, €170,000 of which was returned to the Respondent leaving an outstanding liability of €152,000.

28.11. Following a review of the Appellant's returns for the years 2020 and 2021, on 26 February 2025 the Respondent issued Notices of Amended Assessment to income tax for the years 2020 and 2021 to the Appellant.

28.12. The Notice of Amended Assessment for the year 2020 showed a liability of €24,604.12.

28.13. The Notice of Amended Assessment for the year 2021 showed a liability of €24,094.51.

28.14. In each of the Notices of Amended Assessment, the Respondent removed the claimed credits in relation to income tax and Universal Social Charge on the basis that Company 1 had outstanding liabilities to PREM which had not been returned.

Analysis

29. It is long established that, in appeals against assessments to tax, the burden of proof rests on the taxpayer. Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168 at paragraph 50 stated that:

"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self-assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."

30. Charleton J. confirmed that the burden of proof rests on appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 when he stated at paragraph 22:

"*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*

Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."

31. The Commissioner has considered the evidence adduced, the submissions made and the documentation submitted on behalf of both parties in this appeal.

32. There is no dispute in relation to the material facts or the applicable law between the parties.

33. Section 997A(1)(b) of the TCA 1997 provides that:

"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."*

34. Section 10(3) of the TCA 1997 provides that 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."

35. Section 10(1) of the TCA 1997 defines a "relative" as meaning "*brother, sister, ancestor or lineal descendant*".

36. It therefore follows that, as the Appellant's two brothers each held 33% of the shares in both Company 1 and the Controlling Company, the Appellant was, for the purposes of the TCA 1997, a "relative" of, and was "connected with" two of the shareholders of Company 1 and the Controlling Company who between them held 66% of the shares of each company.

37. It also therefore follows that, for the purposes of section 997A of the TCA 1997, the Appellant had a material interest in Company 1 and in the Controlling Company.

38. Section 997A of the TCA 1997 also provides that:

"(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."

39. It is not disputed between the parties, and the Commissioner has found as material facts, that Company 1 ceased trading in November 2022 and went in to liquidation in January 2023 with outstanding liabilities to PREM as follows:

    39.1. 2020 – total liability to PREM of €307,000, €145,000 of which was returned to the Respondent leaving an outstanding liability of €162,000;

    39.2. 2021 – total liability to PREM of €322,000, €170,000 of which was returned to the Respondent leaving an outstanding liability of €152,000.

40. As there are outstanding liabilities to PREM owed by Company 1 for the years 2020 and 2021, and as there is no documentary evidence to show that the tax deducted from the Appellant through his payslips has been remitted to the Respondent, the provisions of section 997A(3) of the TCA 1997 mean that no credit for tax deducted from the emoluments paid by Company 1 to the Appellant, as a person with a material interest in Company 1, shall be given against the amount of tax chargeable in the contested Notices of Amended Assessment for the years 2020 and 2021.

41. Whilst the Commissioner accepts the evidence adduced by the Appellant in relation to his position within Company 1, the use of the word "*shall*" as set out in section 997A(3)

of the TCA 1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the Commissioner can disapply the provisions of this section of the TCA 1997.

42. The Commissioner has every sympathy with the Appellant's most difficult position. However, the Commissioner must determine that the burden of proof has not been discharged to satisfy her that the contested Notices of Amended Assessment are incorrect.

Determination

43. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that that the Notices of Amended Assessment issued on 26 February 2025 by the Respondent for the tax years 2020 and 2021 were incorrect.

44. Therefore, the Notices of Amended Assessment for the years 2020 and 2021 dated 26 February 2025 shall stand.

45. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular, section 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

46. 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

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.

Clare O'Driscoll
Appeal Commissioner
16 January 2026