



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

62TACD2026□

Between

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**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) against amended assessments to income tax for the years 2020 to 2023 inclusive. The amended assessments were raised by the Respondent on the basis that the Appellant, a director of ██████████ (“Company 1”) and ██████████ (“Company 2) (together, “the companies”), was personally liable for the tax due on the salary paid to him, pursuant to section 997A of the Taxes Consolidation Act 1997 as amended (“TCA 1997”).
2. The total amount of the assessments against which the Appellant appealed was €73,075.22. At the hearing of the appeal, the Respondent stated that credit had subsequently been afforded to the Appellant for 2022 and 2023, and consequently the total amount still at issue was €39,559.51.

**Background**

3. The Appellant was a director of the companies, and owned more than 15% of the shares of each. Both of the companies subsequently went into liquidation.

4. On various dates in 2025, the Respondent issued notices of amended assessment to income tax in the following amounts:

<b>Date of notice</b>	<b>Year</b>	<b>Amount €</b>
27 March 2025	2020	12,196.27
12 February 2025	2021	22,491.16
27 May 2025	2022	18,679.55
12 February 2025	2023	19,708.24

5. The Appellant appealed against the amended assessments to the Commission on 7 July 2025. While the appeals were made late, no objection to their acceptance by the Commission was received from the Respondent.
6. On 25 September 2025, 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. On 16 October 2025, the Appellant objected to the appeal being determined without an oral hearing, and requested a hearing in private.
7. The hearing of the appeal proceeded in private on 12 March 2026. The Appellant represented himself. The Respondent was represented by its officers.

### **Legislation**

8. Section 997A of the TCA 1997 states that

*“(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.”*

## **Submissions**

### *Appellant*

9. In his notice of appeal, the Appellant stated *inter alia* that

*“In [REDACTED] we incorporated [Company 1]. It was set up as we were commencing specialised work [REDACTED]*

*[REDACTED]. We had sales of €67k in 2019 and a profit of €1k.*

*In 2020, our first full year of trading, our turnover was €1.8m with a profit of €64k. It was during this year that the Covid-19 lock down took place. As our [REDACTED] work was considered “essential” we were allowed to continue to fulfil our roles and did not lose or make any staff redundant. Our essential work cantered around our work with*

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*In 2021 our turnover was just short of €4m (€3,937,376) but with a slight loss of €24k mostly due to additional operational setup costs during the year.*

*Again in 2022 our turnover touched €4m with a profit of €100k.*

*In 2023 we lost the ██████████ contract and as we wound down that business, whilst still supporting the customer, our revenue dropped to €1.2m. The last month we would work for this customer was March 2024 and as there was little to now work left in this Company we transferred the remaining staff to our associated company ██████████*

*The majority of the debt owed to revenue was warehoused debt as agreed during the Covid-19 pandemic. In January 2024 we approached Revenue to begin repaying the warehoused debt but we were told that the period had been extended and repayment did not have to commence until May 2024.*

*There was no business going through [Company 1] from the end of March 2024 but our intention was to enter an arrangement on a payment plan for the debt and to service it through our other company.*

*This other company [Company 2] had revenues €5.4 million in 2023 but unfortunately a UK customer went into administration owing the companies €502k.*

*I arranged a loan from ██████████ of €300k (with personal guarantees) and asset backed finance on some warehouse racking of €175K (with personal guarantees) to shore up this hole in cashflow. All would have been potentially fine but an Irish customer migrated to another ██████████ and refused to pay their last 2 months bills despite guarantees from their directors that they would. This left a new hole in cash flow of €243,896.18. I had no other way of generating funds to shore up the new cashflow problem and was left with no option but to seek protection (through a SCARP process). Once SCARP was unsuccessful, we were left with no option but to liquidate both companies.*

*These 2 companies were spawned from ██████████  
██. In the 9 years of trading my salary remained the same, €75,000pa. I did not take any dividends from any of the companies. During the normal*

*course of trading we employed over 100 staff through fulltime employees and agency staff.*

*I have just turned 60 and I have lost everything. I have no job at the moment (since February 2025) and I have financial institutions chasing my personals guarantees for €525K ( [REDACTED] )*

*Now I understand what revenue are doing here but these taxes were deducted from my salary each month. I never received these. Now revenue have offset this against some of the warehoused debt and chasing me to pay them again. Talk about kicking a man when he is down!*

*For some of the years I did pay these taxes and they were not warehoused. Revenue are ignoring that and requesting I pay that again.*

*I understand there are unscrupulous directors out there and Revenue need tools to catch them and hold them to account but we did everything we could to run a strong, vibrant company that paid its bill as they were due. We did not operate this as a lifestyle business. The initial liquidators report is out and he is not recommending any Director restrictions which shows he has found everything to be above board.*

*[...]*

*Again all we did was to try to grow the business as best we could whilst looking after our employees and customers.*

*This reassessment from revenue on these taxes is grossly unfair and unwarranted. We gave gainful employment to hundreds of staff and associated businesses for 9 years for which we paid ourselves small salaries, relative to the turnover and profit. We paid our taxes on these salaries. And now, when everything is lost Revenue do this. It's not fair."*

10. These arguments were reiterated in the Appellant's Statement of Case, and similar arguments were put forward in the Appellant's Outline of Arguments.
11. In oral submissions, the Appellant accepted that the Respondent's position may be correct in law. However, his submission was based on fairness. He stated that he never took a pay rise from the companies. The plan was to sell the business to fund his retirement. He never saw the benefit of the monies that the Respondent was seeking to collect. The Appellant outlined difficulties encountered during the SCARP. The liquidator of the companies had found that the directors, including the Appellant, had acted in a professional and honest way. He would not have done anything differently during the

period leading up to the liquidation. He did not deliberately withhold funds from the Respondent.

*Respondent*

12. In its Outline of Arguments, the Respondent stated *inter alia* that

*“Revenue raised an Assessment, to amend the Appellant’s Income tax return, Form 11, for each of the years 2020, 2021, 2022 and 2023, under the Section 997A TCA 1997, to account for Employer’s PAYE tax deducted under the PAYE system, which were not remitted by the company that the Appellant was a proprietary director of. These Revenue’s Assessments are a subject matter of this appeal.*

*The Appellant was a proprietary director with more than a 15% shareholding in [the companies] in all the years.*

*The Income Tax returns were amended in the meantime, since the appeal was filed, to restore PAYE tax deducted credit, in a full amount for the year 2022 and partially for the year 2023, to the extent the tax was remitted by the company to Revenue. The Notices of Assessment issued on the 12/11/2025, confirming same*

*[...]*

*On 26/03/2025 Revenue raised an Assessment [for 2020], and the tax deducted under PAYE system for directorship with [Company 1] was removed. This Assessment resulted in amended liability of €15,335.55. This is in accordance with Section 997A TCA 1997, as the company had not remitted the total tax deducted under the PAYE system for the year 2020, and a total of €59,445.79 remains outstanding.*

*[...]*

*On 11/02/2025 Revenue raised an Assessment [for 2021], and the tax deducted under PAYE system for directorship with [Company 1] was removed. This Assessment resulted in amended liability of €22,491.16. This is in accordance with Section 997A TCA 1997, as the company had not remitted the total tax deducted under the PAYE system for the year 2021, and a total of €290,453.93 remains outstanding.*

*[...]*

*On 26/03/2025, Revenue raised another Assessment [for 2022], and the tax deducted under PAYE system for directorship with [Company 1] was removed, in accordance with Section 997A TCA 1997. This Revenue Assessment resulted in an amended tax liability of €34,800.88.*

*On 26/05/2025, Revenue raised an Assessment to remove LPT late filing surcharge. This amendment resulted in reduced liability of €31,171.55. Following a further review, Revenue raised an Assessment on 12/11/2025, and the PAYE credits have been reinstated (PAYE €19,190.14 and USC €2,835.90), as per tax remittance by the company. This amendment resulted in restored original liability of €9,146.55.*

*On 11/02/2025 Revenue raised an Assessment [for 2023], and the tax deducted under PAYE system for directorship with [Company 1] was removed. This Assessment resulted in amended liability of €19,708.24. This is in accordance with Section 997A TCA 1997, as the company had not remitted the total tax deducted under the PAYE system for the year 2023. Following a further review, Revenue raised another Assessment on 11/11/2025, and part of the PAYE tax deducted credit, has been reinstated (PAYE €8,695.64, USC €2,795.25) in accordance with tax remittance by the company to Revenue. This Revenue Assessment resulted in an amended liability of €8,217.24. The company had not remitted the total tax deducted under the PAYE system for the year 2023, and a total of €15,107.84 remains outstanding.”*

13. In oral submissions, the Respondent’s officer stated that the Respondent sympathised with the Appellant’s position. However, the Respondent was obliged to apply the statutory provisions including section 997A. There were substantial debts outstanding on behalf of the companies for 2020, 2021 and 2023. The officer recommended that the Appellant engage with the Collector-General’s office.

**Material Facts**

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

14.1. The Appellant was a director of, and held a shareholding greater than 15% in, both of the companies. The companies have since gone into liquidation.

14.2. The Respondent raised amended assessments to income tax for the years 2020 to 2023 against the Appellant on the basis that he was personally liable for the tax due on the salary paid to him by Company 1.

14.3. The amended assessments against which the Appellant appealed to the Commission were as follows:

Date of notice	Year	Amount €
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27 March 2025	2020	12,196.27
12 February 2025	2021	22,491.16
27 May 2025	2022	18,679.55
12 February 2025	2023	19,708.24

14.4. After the appeal was commenced, the Respondent issued further notices of amended assessments to income tax for 2022 and 2023. At the hearing of the appeal, the Respondent stated that the Appellant was owed a refund €3,345.45 for 2022, and had an outstanding balance of €8,217.24 for 2023.

14.5. The Appellant contended that he did not believe it was fair for the Respondent to raise the amended assessments. However, he did not dispute the factual basis upon which the amended assessments had been raised, nor did he contend that the Respondent had been wrong in law, or otherwise not entitled, to raise the amended assessments.

### **Analysis**

15. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 (*Menolly Homes*), Charleton J 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 Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

16. This appeal concerns section 997A of the TCA 1997. Section 997A(3) provides that no credits shall be allocated to a director or employee having a “material interest” in a company, in respect of deductions made by the company from that person’s emoluments, in circumstances where the company has unpaid taxes that ought to have been deducted and remitted by the company to the Respondent.

17. Section 997A(1)(b)(i) provides that a person shall have a material interest in the company if (*inter alia*) he or she holds more than 15% of the ordinary share capital of the company. It is not in dispute in this appeal that the Appellant held more than 15% of the shares of the companies, and therefore the Commissioner is satisfied that he had a material interest in the companies, for the purposes of section 997A.

18. The Appellant has also not disputed the facts as stated by the Respondent regarding the non-remittance of taxes by Company 1. Instead, his argument was that the raising of the assessments was unfair. He outlined the circumstances surrounding the liquidation of the companies, and stated that he had done everything he could to try and ensure their survival. He stated that had not acted dishonestly and had not deliberately withheld funds from the Respondent.
19. The Commissioner has considered the documentary evidence submitted by the Appellant, as well as the cogent submissions made by him at the hearing. The Commissioner has no doubt that the failure of the companies has been very difficult for him, and the Commissioner has no reason to doubt his *bona fides* or the accuracy of his evidence. In particular, the Commissioner notes the Appellant's evidence that the liquidator of the companies has stated that the directors of the companies (including the Appellant) acted honestly and responsibly in their roles.
20. However, the difficulty with the Appellant's case is that he has not challenged the submissions of the Respondent that taxes were not remitted by the companies. Furthermore, section 997A(3) is stated in mandatory terms: "...no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given in any assessment raised on the person... unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General..." (emphasis added).
21. Therefore, the Commissioner considers that there is no discretion open to the Respondent, or to the Commission on appeal, to disapply or waive the additional taxation upon the Appellant, on the basis that he acted properly in his role as director, or that the raising of the amended assessments was unfair. In *Menolly Homes*, Charleton J remarked that "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute.*"
22. The Commissioner is satisfied that the amended assessments were raised in accordance with section 997A of the TCA 1997, and that therefore the appeal cannot succeed. The Commissioner appreciates that this outcome will be disappointing for the Appellant. However, as explained above, the Commissioner's role is limited to considering and determining whether the amended assessments have been raised correctly in accordance with the applicable statute, and he has no discretion or jurisdiction to reduce or abate an assessment on the basis of what might be considered equitable or fair in the particular circumstances of any given appeal. The Commissioner agrees with the

suggestion of the Respondent that the Appellant should engage with the Collector-General to discuss his potential options.

23. The position has been confused somewhat by the raising of further amended assessments by the Respondent for 2022 and 2023 after the issuance of the appeal, although these were done to reduce the Appellant's liability and therefore the Commissioner is satisfied that he has not been prejudiced by the Respondent's actions. While the Commissioner notes the submissions of the Respondent that the correct position is as set out in the amended assessments of 12 November 2025 for 2022 and 2023, strictly speaking this appeal is concerned with those amended assessments against which the Appellant appealed, i.e. those dated 27 May 2025 for 2022, and 12 February 2025 for 2023.
24. Therefore, for the purposes of clarity, the Commissioner determines that the amended assessment for 2022 should be reduced so as to result in a refund payable to the Appellant of €3,345.45. The liability pursuant to the amended assessment for 2023 should be reduced to €8,217.24. The amended assessments for 2020 and 2021 shall stand.

#### **Determination**

25. 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 determines that the amended assessments to income tax for 2020 and 2021 shall stand. The amended assessment to income tax for 2022 shall be reduced so as to result in a refund payable to the Appellant of €3,345.45. The amended assessment for 2023 shall be reduced to €8,217.24.
26. 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**

27. 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**

28. 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  
31 March 2026