AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

65TACD2026

Between

COVEBURY LIMITED

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 of the Taxes Consolidation Act 1997 as amended ("TCA 1997") against a determination by the Revenue Commissioners ("the Respondent") that its relevant contracts tax ("RCT") deduction rate was 20%.

2. The Appellant seeks to be placed on the 0% rate, pursuant to section 530G of the TCA 1997. The Respondent concluded that the Appellant did not satisfy the requirements of section 530G.

Background

3. The Appellant company was established in 2024. It registered for corporation tax, RCT, value-added tax ("VAT") and PREM from 1 June 2024. Its director registered for income tax with effect from 1 January 2024.

4. On 16 December 2024, the Respondent notified the Appellant that its rate of RCT as a subcontractor was determined to be 20%. On 4 June 2025, the Appellant appealed

against the Respondent's determination to the Commission. While the appeal was made late, there was no objection by the Respondent to the Commission accepting the appeal.

5. On 26 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 15 October 2025, the Respondent objected to the appeal being determined without an oral hearing.

6. The hearing of the appeal took place on 19 March 2026. The Appellant was represented by its agent and the Respondent was represented by counsel. Prior to the hearing, the Appellant's agent confirmed that the Appellant was not seeking a private hearing. Consequently, the hearing took place in public, and this determination will be published unredacted on the Commission's website.

Legislation and Guidelines

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

"*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

(d) shall, in the case of a partnership, be the highest rate that would apply to any of the individual partners following a determination by the Revenue Commissioners under section 530I."

8. Section 530G of the TCA 1997 states that:

"*(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—

(a) …

(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,

(c) who is or was a proprietary director or proprietary employee of a company engaged in the business of carrying out relevant contracts unless the company is a person to whom 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), …

(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."

9. Section 530H of the TCA 1997 states that:

"*(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.

(2) For the purposes of subsection (1)(d), the Revenue Commissioners may make regulations identifying matters to be taken into account by them, including -

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

(b) the delivery of returns,

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

(d) the extent to which any non-compliance is being addressed.

(3) This section does not apply to -

(a) a person engaged in the business of carrying out relevant contracts in partnership unless the partnership business itself has complied with the obligations referred to in subsection (1) and the Revenue Commissioners are satisfied that it will continue to comply with those obligations, or

(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."

10. Section 530I of the TCA 1997 states *inter alia* that:

"*(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

11. In written submissions, the Appellant's agent stated *inter alia* that:

> "*The role of Revenue is to ensure that tax returns are filed, taxes are collected and that registered persons operate the tax acts as laid down by Dail Eireann. They have been given extraordinary powers to carry out their role. With power comes responsibility, and this extends to operating the tax system in a professional, competent, transparent and fair manner to the taxpayer. Revenue are not the legislators, police, judge /jury or executors. They have a statutory role and their power lies in the legislation and courts. Any attempt to assert power outside this realm is illegal and abuse.*
>
> *RCT is not a tax. It is a system of withholding a% of the trading receipts of a contractor to ensure that the contractor in question discharges his/her tax obligations eg PAYE/VAT/Corporation tax/Income tax. Such deductions can be applied to discharge the above noted taxes. However, if an excess of tax withheld remains after discharging the aforementioned taxes, the overpayment cannot be refunded until the company corporation tax return is filed for the applicable year of assessment. As a corporation tax return is not due to be filed until the 9" month after the Company year end, Revenue could potentially hold money not belonging to them for up to 21 months. To alleviate this injustice, Revenue have the power to apply 3 rates, (0%, 20% and 35%) which can change at the press of a button and without any notification. It is agreed that such a system is required in the case of potential delinquent tax payers to ensure all taxes are discharged. Revenue operate this withholding system in real time ie they control the deduction rate prior to the payment of a trading receipt by the customer and have real time information in regard to PAYE and VAT. These are required tools to protect the interests of Revenue. It is an important tool in tax collection and compliance and its prudent use can only be commended.*
>
> *Section 530 G is the governing legislation which determines the rate of deduction on trading receipts (VAT inclusive) and provides guidelines in the application of those rates. I specifically call them guidelines, as Section 530(G) (3) allows the previous 2 sections to be ignored.*
>
> *We have requested Revenue to reduce the deduction rate to 0% because the current rate of 20% is placing the appellant in an impossible trading position whereby he cannot discharge his trading debts as they fall due. All taxes have been filed and discharged on time (with exception to the VAT Aug 25 which is late due to illness) and*

as at 17/10/2025, €12,473 is owed to the client. As the financial year progresses, the amount held unlawfully by Revenue will get bigger and bigger, until the Company ceases trading because it cannot discharge its liabilities.

[…]

The Company registered for CT, VAT, RCT and PAYE on 01/06/24. The Director registered for Self Assessed Income Tax on 1/1/24 but has been registered for income tax since he started working, some 13 years ago. The company has filed all of its tax obligations on time. The case worker tried to infer that the VAT returns were late on 1 or 2 occasions because they filed a few days after the required 23rd of the month following the vat period. As pointed out, Revenue accept as compliant returns filed within the calendar month of the filing date. This is because it is a case of pragmatics and good common sense on both sides given the short allowable time ie 23 days to file a VAT 3.

The exception to this is the filing of Form 11's and CT1's as 8 months and 23 days are given to submit same which is strictly enforced.

As at today the Company is owed €12,473. This figure would have been substantially higher only we were forced to shorten the year end to retrieve funds with held on RCT.

[…]

The legislation does not say the Company must be registered for 3 years. It says it must comply with its obligations throughout the previous 3 years. The Company has done exactly this since incorporation , which happens to be less than 3 years. By virtue of not being registered for 3 years (which Is not the obligation), does not mean it is not compliant. In fact it is an impossibility. If the legislation intended that the Company must be registered for 3 years, it would have stated that. Instead it refers to obligation compliance.

Furthermore, the section refers to the "tax acts", capital gains and vat. The term "tax acts" must also include tax acts in relation to stamp duty, CAT, Environmental levy, defective concrete levy, Sweetened sugar taxes, mineral oils etc. Does this mean that every taxpayer granted the 0% rate has complied with the all obligations imposed by the latter taxes. Of course not, because it would not be possible to comply with the obligations imposed by these acts as they have not been registered for those taxes. But the section does say they must comply with the obligations imposed by the "tax acts".

Revenue cannot "pick and choose". Under the Charter of Taxpayers rights there is an obligation for Revenue to apply the law equally and consistently to all tax payers.

[…]

So lets look at this again, neither the Company nor the proprietary director breach any of the conditions for a O % RCT rate and for the last 3 years both the Company and Mr McGlynn have complied with their obligations under the tax acts.

Finally, we go to 530G (3)- Revenue have the discretion to apply a 0% rate even where a condition in (1) or (2) might not be met. This would imply that Sections 530(G) 1 and 2 are only guidelines.

In correspondence, Revenue have specifically stated they are not satisfied that this section should apply.

Okay-what are they not satisfied with?

I want the precise reason for not being satisfied. It cannot be on the basis of risk as there no breaches of 1 or 2 and as taxes are filed on real-time, they are in the position to amend the RCT rate for non compliance. Revenue have willingly refused to consider this Section because it would then mean that officers down the line are wrong and RSL guidance is wrong and the Chair of the Revenue Commissioners is wrong. Revenue will never admit they are wrong, meanwhile Revenue force a compliant taxpayer into liquidation, without consequence. If they are wrong, and wilfully so, have they committed the criminal act of theft or abuse of power, otherwise known as bullying.

It is this final section that cannot be ignored and is the ultimate basis for reason. It might also be noted that there are facilities under the PWT for interim refunds where hardship might be caused. But of course, Professionals are more important than lorry drivers. However, because Revenue operate RCT in real-time, they could in effect provide some relief in managing the RCT rate as they can vary the rate as they see fit.

Ultimately, it is the belief of the Appellant that Revenue are simply wilfully misinterpreting the legislation to refuse a 0% RCT rate and are wilfully causing hardship for the sake of not admitting to being wrong or are being arrogantly abusive. Take your choice."

12. In oral submissions, the Appellant's agent stated that the Commissioner should make a decision based on what was within the law and what was "*reasonably fair*". He referred to the Respondent's Customer Charter and contended that the Respondent had not acted fairly towards the Appellant. The Respondent may have correctly interpreted section

530G(1), but the Appellant sought to rely upon the discretionary provision contained in section 530G(3). The Appellant's tax record was impeccable. The Respondent had the capability of assessing the Appellant's liabilities and payments on an ongoing basis, so there was no risk to it.

13. In reply to the Respondent, the agent accepted that some of the VAT returns had been submitted after the deadline. However, the Respondent had to be realistic and practical, and the Appellant was only ensuring that its returns were correct. The Respondent was often slow itself in addressing enquiries. The Appellant could not have been obliged to make returns before it existed, so it could not be precluded by section 530G(1)(d) from being granted the 0% rate. If the Commissioner determined that he did not have the power to assess whether the Respondent had used its discretion appropriately, the Appellant would then seek to make a ministerial request on the matter.

Respondent

14. In written submissions, the Respondent stated that the Appellant's VAT returns for the periods May/June 2024, September/October 2024 and November/December 2024 were filed late. Section 530G(1)(d) required a subcontractor to have fulfilled all of its tax obligations in a timely manner over the previous three-year period. The Appellant had not traded for the requisite three years so could not fulfil this requirement. There were a number of previous determinations of the Commission that had found that section 530G required a three-year tax history.

15. Section 530G(3) conferred a discretionary power on the Respondent and the Commission had no jurisdiction to deal with the exercise of the Respondent's discretion; *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"). The Commission had no supervisory jurisdiction over the Respondent and did not have any jurisdiction to consider allegations of unfairness or errors in procedure on the part of the Respondent.

16. In oral submissions, counsel stated that the statutory provisions should be interpreted using their ordinary and natural meaning. The words also had to be considered in context – both the immediate context and the surrounding provisions. The 0% rate was effectively a relieving provision so the principle in *Revenue Commissioners v Doorley* [1933] IR 750 ("*Doorley*") applied.

17. Counsel confirmed that the Respondent's position was that the discretionary power contained in section 530G(3) was not within the jurisdiction of the Commission and could only be challenged by way of judicial review. In this matter, the Respondent had reviewed the Appellant's circumstances on a number of occasions but was not satisfied that it

should apply the 0% rate. One of the issues was that some of the Appellant's VAT returns were submitted outside of the relevant time limit.

18. The Respondent applied the RCT credit to offset other tax liabilities owed by the Appellant. While the Appellant's agent had referred to professional withholding tax, that was a different regime and not relevant herein. Furthermore, the Respondent's Customer Charter was outside the jurisdiction of the Commission, but the Respondent was simply applying the law as it stands.

Material Facts

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

    19.1. The Appellant company was established in 2024. It registered for corporation tax, RCT, value-added tax ("VAT") and PREM from 1 June 2024. Its director registered for income tax with effect from 1 January 2024.

    19.2. On 16 December 2024, the Respondent notified the Appellant that its rate of RCT as a subcontractor was determined to be 20%. On 4 June 2025, the Appellant appealed against the Respondent's determination to the Commission.

    19.3. Between May 2024 and December 2025, the Appellant filed its VAT returns after the due date on eight occasions.

Analysis

20. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), 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.*"

21. Additionally, in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated *inter alia* 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. RCT is a withholding tax that applies to certain payments made by principal contractors to subcontractors in the construction, forestry and meat-processing industries. The rates of RCT are 0%, 20% and 35% and the appropriate rate is determined by the Respondent following an assessment pursuant to the provisions of Chapter 2 of Part 18 of the TCA 1997, including sections 530E, 530G and 530H. The RCT deducted is available as a credit against the subcontractor's taxation liabilities. However, a subcontractor who is not on the 0% rate may build up a credit with the Respondent and suffer a lapse in time before getting that refund issued to it.

23. In this appeal, the Appellant was placed on the standard rate of RCT, i.e. 20%, on the basis that it had not satisfied the requirements of section 530(1)(d) of the TCA 1997, in that it had not "*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*". The Appellant is aggrieved by this, and states that as it has not been established for three years it cannot be said to have failed to comply with its obligations. It also seeks the Respondent to apply its discretion pursuant to section 530G(3).

24. The Commissioner is satisfied that this appeal is primarily concerned with the correct interpretation of the relevant statutory provisions, and therefore that the principle regarding the burden of proof as enunciated in *Hanrahan* should apply. In *Perrigo Pharma International Activity Company v McNamara* [2020] IEHC 552, the High Court (McDonald J) summarised (at paragraph 74) the principles of statutory interpretation as they apply to taxation:

"*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"."

25. In *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43, the Supreme Court reiterated that the words of the statute should be given their ordinary and natural meaning, while being viewed in context. At paragraph 106, Murray J stated that:

"*The judgment of McKechnie J. in [Brown; Minister for Justice v Vilkas [2018] IESC 69] provides a good summary that is reflected in the other decisions: indeed, it was cited at some length and relied upon in the course of the judgment of the Court of Appeal in this case. The essential points he made were as follows:*

(i) The first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning (at paras. 92 and 93).

(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include ' the immediate context of the sentence within which the words are used; the other subsections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including … LRC or other reports; and perhaps … the mischief which the Act sought to remedy' (at para. 94).

(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language (see para. 92).

(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted (at para. 95)."

26. The primary issue to be determined in this appeal is the correct interpretation of section 530G(1)(d) of the TCA 1997. This requires that the relevant subcontractor:

"*(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".

27. The Respondent determined that the Appellant did not satisfy this requirement because *(inter alia*) it had not been established for three years so therefore did not have the necessary compliance record. The Appellant contends that the section does not explicitly require a subcontractor to have been in existence for at least three years, and that it has not failed to comply with any of its tax obligations.

28. The first step in interpreting this provision is to determine whether its words are plain and their meaning self-evident. In one sense, the Commissioner considers that they are; the section requires a three-year record of compliance, and the Appellant has not been able to show such a record. Therefore, it could be said to fall foul of section 530G(1)(d) on this basis.

29. However, the Commissioner agrees with the Appellant that the section does not explicitly state that a sub-contractor seeking to be placed on the zero rate must have been established for three years. Consequently, there is arguably a degree of ambiguity regarding how the provision should be applied to those sub-contractors, such as the Appellant, that cannot show a three-year compliance record because they have not been established for at least three years.

30. Therefore, according to the jurisprudence, it is necessary to consider the context in which section 530G operates. As stated above, RCT is a withholding tax, and is designed to reduce the risk of a taxpayer defaulting on its tax liabilities. It was fairly accepted by the Appellant's agent at the hearing that the Appellant's industry had a reputation for non-compliance with taxation and that this was the reason for the imposition of RCT.

31. Importantly, section 530G is not a standalone provision but must be understood in the context of the relevant sections around it. Section 530E(1) provides that the rate of RCT:

"(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".

32. The Commissioner considers that the description of the 20% rate as the "*standard rate*" is significant, and indicates that the Oireachtas intended that this should be the starting point for the Respondent when assessing the correct rate of RCT to be applied to a sub-contractor. Given this, he agrees with the Respondent that the zero rate is effectively a relieving provision, and that therefore the principle in *Doorley* should apply.

33. As stated by the Supreme Court in *Doorley*, "*exemption from…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.*" Exemptions to taxation must be strictly construed, so as not "*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.*"

34. Having regard to this principle, the Commissioner considers that the requirement in section 530G(1)(d), that a sub-contractor demonstrate a three-year compliance record to be entitled to the zero rate, must be applied strictly. Therefore, if a sub-contractor cannot demonstrate such a record because it has not been established for at least three years, it is not entitled to the zero rate.

35. This finding is sufficient to determine that the Appellant herein does not satisfy the requirements of section 530E(1)(d). However, in addition, the Respondent argued that the Appellant had submitted its VAT returns late on a number of occasions. It submitted the following table:

VAT 3 RETURN	DUE DATE	EXTENSION TO DUE DATE WHEN FILING THROUGH ROS	DATE FILED
May/Jun 2024	19/07/2024	23/07/2024	05/09/2024
Jul/Aug 2024	19/09/2024	23/09/2024	24/09/2024
Sep/Oct 2024	19/11/2024	23/11/2024	27/11/2024
Nov/Dec 2024	19/01/2025	23/01/2025	29/01/2025
Jan/Feb 2025	19/03/2025	23/03/2025	18/03/2025
Mar/Apr 2025	19/05/2025	23/05/2025	22/05/2025
May/Jun 2025	19/07/2025	23/07/2025	29/07/2025
Jul/Aug 2025	19/09/2025	23/09/2025	24/10/2025
Sep/Oct 2025	19/11/2025	23/11/2025	01/12/2025
Nov/Dec 2025	19/01/2026	23/01/2026	30/01/2026

36. There was nobody present from the Appellant company to challenge the Respondent's contention that it had filed a number of its returns late[1]. In any event, its agent did not dispute the contents of the above table, but argued that there were mitigating factors and that the Respondent should take a pragmatic approach. In the circumstances, the Commissioner finds that the Appellant filed its VAT returns after the due date on eight occasions between May 2024 and December 2025.

37. However, the provisions of section 530(1)(d) are mandatory, and include that the sub-contractor has complied "*with all the obligations*" imposed by the tax acts, including "*(ii) the delivery of returns*". The unchallenged evidence of the Respondent was that the Appellant had not complied with this obligation, and therefore the Commissioner considers that this would disentitle it to the zero rate, even if it was otherwise able to demonstrate a three-year record of compliance.

38. Finally, the Appellant's agent stated that he wanted the Commissioner to apply the discretion afforded to the Respondent by section 530(3) to grant the Appellant the zero rate. The Respondent argued that the application of its discretion was not within the jurisdiction of the Commission to consider.

39. As a statutory body, the Commission only has the jurisdiction that has been granted to it by statute. Section 530I(3)(a) of the TCA 1997 provides that "*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*

[1] As this is a question of evidence rather than statutory interpretation, the Commissioner is satisfied that the burden of proof regarding it remains on the Appellant, as per *Menolly Homes.*

accordance with section 949I, within the period of 30 days after the date of that determination."

40. Section 530I(1) simply states that the Respondent shall determine whether sections 530G or 530H, or neither of them, apply to a sub-contractor. Both sections 530G and 530H include the discretionary power afforded to the Respondent to apply the relevant RCT rates even if the sub-contractor does not satisfy the strict requirements. Therefore, it is arguable that the right of appeal to the Commission created by section 530I(3)(a) includes an appeal against the exercise of the Respondent's discretion under section 530G(3) and/or section 530H(4).

41. However, the Commissioner is also cognisant of the Court of Appeal judgment in *Lee.* After considering the jurisdiction of the predecessor of the Commission in depth, Murray J concluded at paragraph 76 that

> "*The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933,934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.*"

42. The Commissioner considers that the interpretation of section 530I(3)(a) has to be considered in light of the principles set out by Murray J in *Lee*. Consequently, the role of the Commissioner herein is "*is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes.*" While this appeal

concerns a determination of the Respondent rather than an assessment, the Commissioner has set out above why he is satisfied that the determination correctly applied the provisions of section 530G(1)(d). He is furthermore satisfied that any finding that the Respondent incorrectly applied its discretion, or acted unreasonably in some way, would be to trespass into matters that would properly be the subject of judicial review proceedings in the High Court.

43. Consequently, the Commissioner determines that he does not have jurisdiction to consider the discretionary provision set out in section 530G(3). However, even if he did, he would find that the Appellant was not entitled to the zero rate on a discretionary basis, in circumstances where it failed to comply with its obligations to submit its VAT returns by the due date on a number of occasions.

44. In conclusion, the Commissioner determines that the Respondent correctly interpreted the provisions of section 530G(1)(d) in determining that the standard rate of RCT should apply to the Appellant, and the appeal is unsuccessful.

Determination

45. 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 Respondent's decision to apply the standard rate of RCT to the Appellant shall stand.

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

Notification

47. 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

48. 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
8 April 2026