AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

89TACD2026

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

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 [redacted] ("Company 1") and [redacted] ("Company 2") (together, "the companies"), was personally liable for the tax due on the salaries paid to him, pursuant to section 997A of the Taxes Consolidation Act 1997 as amended ("TCA 1997"). The total amount of the assessments under appeal is €64,018.96.

Background

2. 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.

3. On 27 August 2025, the Respondent issued notices of amended assessment to income tax in the following amounts:

Year	Amount €
2020	9,851.56
2021	16,957.74
2022	14,734.30
2023	22,475.36

4. The Appellant appealed against the amended assessments to the Commission on 30 September 2025. While the appeals were made late, no objection to their acceptance by the Commission was received from the Respondent.

5. The hearing of the appeal proceeded in private on 30 April 2026. The Appellant represented himself. The Respondent was represented by its officers.

Legislation

6. 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

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

"*I fully acknowledge both my obligations as a taxpayer and Revenue's stance in seeking to protect the Exchequer.*

However, I respectfully submit that the amended assessments for 2020–2023 apply Section 997A TCA 1997 in a manner that is disproportionate and unfair in the particular circumstances of my more recent businesses. While I accept my responsibilities, I believe I was also extremely unlucky with timing:

- *Covid-19 closures hit my sector especially hard.*
- *Warehousing deadlines and rigid repayment terms fell just as trading capacity had permanently weakened.*
- *Enforcement actions landed at critical trading points.*
- *Energy prices surged just as we launched a new venture.*

In hindsight, had I known what was down the tracks in March 2020, I would have handed back the keys in the first week of lockdown. However, as advised by the government at the time, we fought to keep the businesses going and to bring as many employees back as possible. The warehousing of tax debts allowed this, but in reality it encouraged businesses like ours to continue trading in circumstances where closure might otherwise have been the prudent decision. Ultimately, the government's strategy *during Covid was focused on protecting jobs, and we followed that approach, even though it placed enormous strain on the businesses. Despite those efforts, the businesses ultimately failed.*

[…]

Although [Company 1] was in a slightly better position than [Company 2] in early 2024, we felt it was inevitable that it too would face the same difficulties within weeks, and we made the very difficult but correct decision to close the business on [redacted] 2024.

[…]

[Re Company 2]: By early 2024, although the warehouse debt had not yet formally fallen due, Revenue were insistent that we address it alongside the company's current PAYE liabilities. We could not negotiate repayments over longer than five years. On our turnover (€14–15k per week), repayments under those terms were not impossible, but they would have left no wage for me to support my family. Just prior to [redacted] 2024, Revenue placed an attachment on the company's bank account. We were unable to contact Revenue for some time due to [redacted]. During this period, further liabilities fell due which our overdraft could possibly have covered, but with the account frozen they went unpaid. We were already in difficulty, and this left the business with no realistic chance of recovering. [Company 2] closed on [redacted] 2024.

[…]

I appreciate that from the outside it may seem that the writing was on the wall for these businesses. But for me, this was my livelihood, something I had given [redacted] years of my life to. While the decision to walk away was the correct one, it caused not only huge financial strain but was also mentally very difficult. From the beginning of Covid, this was the most difficult period of my life, and I believe most [redacted] owners would agree.

[…]

I understand Revenue do not consider Section 997A to be double taxation. However, in practical terms, although PAYE/USC was never paid over to Revenue, it was deducted from my wages and I did not receive it personally. I must now earn fresh income (taxed again) to repay these liabilities.

Finally, I want to say that we are genuinely sorry for what happened and for the debts that remain. We always tried to engage with Revenue and to keep the businesses going, but the combination of Covid, warehousing deadlines, enforcement, and energy *costs proved too much. What feels most unfair is that we are now being punished personally for the businesses failing, despite registering as limited companies…*

I respectfully request that the Tax Appeals Commission:

> *1. Consider whether, in my circumstances, the application of Section 997A to liabilities connected with Covid warehousing, rigid repayment terms, the timing of enforcement actions, and extraordinary energy costs is proportionate.*
>
> *2. In the alternative, recognise the disproportionate impact of Section 997A in these circumstances and amend the assessments accordingly*."

8. Similar arguments were made by the Appellant in his Statement of Case. He also stated that "*PAYE was not remitted because the company* [sic] *was unable to pay, not because it chose not to pay…The PAYE arrears arose solely because the company* [sic] *was insolvent. I did not act deliberately, negligently or improperly.*" He further argued that "*Section 997A is a severe provision designed to apply only where there is deliberate non-remittance or serious negligence by a director. It does not apply where a company simply cannot pay due to insolvency.*"

9. The Appellant provided brief oral submissions at the hearing of the appeal. He stated that the amended assessments felt like "*an extra punishment on what we've already been through.*" He stated that he tried to negotiate with the Respondent in early 2024 regarding debt warehousing but that "*they weren't willing to work with us on that point regarding the warehousing of the tax.*" He stated that the tax liabilities arose "*not by personal gain but by the companies being insolvent.*"

Respondent

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

"*The PAYE tax deducted credit for the directorship with [Company 1], was removed in the full amount, on the Income tax returns (Form 11) for the years 2020 and 2021 as the outstanding Employer's PAYE liability exceeds the amount of credit in those years for both directors, and a partial credit was allowed for 2022 and 2023 as per the remittance of PAYE tax by the company.*

The PAYE tax deduction credit for the directorship with [Company 2], was removed in the full amount in the years 2020 , 2021 and 2023 as the outstanding Employer's PAYE liability exceeds the amount of credit in those years for both directors, while for the *year 2022, a partial credit was allowed, as per the remittance of PAYE tax by the company…*

[For 2020]: The total amount of outstanding Employer's PAYE tax for [Company 1] is €26,244, while the amount outstanding for [Company 2] for the year 2020 is €22,421. The outstanding tax amount, for each company, exceeds the aggregate credits claimed by the directors…

[For 2021]: The total amount of outstanding Employer's PAYE tax for [Company 1] is €37,234, while the amount outstanding for [Company 2] for the year 2020 [sic] *is €43,567. The outstanding tax amount, for each company, exceeds the aggregate credits claimed by the directors…*

[For 2022]: The total amount of outstanding Employer's PAYE tax for [Company 1] is €21,872, while the amount outstanding for [Company 2] for the year 2022 is €7,271. The outstanding tax amount, for each company, exceeds the aggregate credits claimed by the directors…

[For 2023]: The total amount of outstanding Employer's PAYE tax for [Company 1] is €20,801, while the amount outstanding for [Company 2] for the year 2023 is €19,400. The outstanding tax amount, for each company, exceeds the aggregate credits claimed by the directors…

The companies did not meet the conditions of the Debt Warehousing Scheme, having failed to file the returns, pay current taxes and enter into the required phased payment arrangements. As a result, the warehousing of the liabilities ceased upon revocation or expiry of the scheme on [redacted] *2024. Despite Revenue's efforts to reach agreement with the company regarding the outstanding liabilities, no resolution was achieved. Revenue subsequently raised assessments on the Appellant to apply section 997A, as the relevant PAYE and USC amounts had not been remitted to Revenue by each respective company, the directors were not entitled to claim corresponding PAYE and USC credits in accordance with Section 997A TCA 1997…*

The directors were not entitled to claim PAYE and USC credits in respect of amounts that had not been remitted by each company. The legislative basis for this position is set out in Section 997A of the Taxes Consolidation Act 1997, and the Appellant has been duly notified of this."

11. In oral submissions at the hearing, the Respondent's officer stated that the Respondent empathised with the Appellant's position. However, section 997A was enacted to protect the integrity of the PAYE system. The officer summarised the figures for the years under

appeal, and confirmed that they were the same as stated in the Respondent's Outline of Arguments and as per the amended assessments.

Material Facts

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

    12.1. 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.

    12.2. The Respondent raised amended assessments to income tax for the years 2020 to 2023 against the Appellant to account for PAYE and USC deducted under the PAYE system which was not remitted by the companies.

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

Year	**Amount €**
2020	9,851.56
2021	16,957.74
2022	14,734.30
2023	22,475.36

    12.4. The Appellant contended that he did not believe it was fair for the Respondent to raise the amended assessments, which he argued were disproportionate, and stated that he had not benefited from the failure by the companies to remit tax. However, he did not dispute the factual basis upon which the amended assessments had been raised.

Analysis

13. 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."

14. 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.

15. 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.

16. The Appellant has also not disputed the facts as stated by the Respondent regarding the non-remittance of taxes by the companies. Instead, his argument was that the raising of the assessments was unfair. He stated that the companies were unable to pay the taxes, and that he did not personally benefit from the non-payment. He argued that the failure of the companies was due to the impact of the Covid-19 pandemic, and that section 997A should only apply where there had been deliberate non-remittance or serious negligence by a director.

17. The Commissioner has considered the documentary evidence submitted by the Appellant, as well as the submissions made by him at the hearing. The Commissioner has no doubt that the failure of the companies has been difficult for him, and the Commissioner has no reason to doubt the accuracy of his evidence.

18. 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: *"…<u>no credit for tax</u> deducted from the emoluments paid by the company to a person to whom this section applies <u>shall be given</u> in any assessment raised on the person… <u>unless there is documentary evidence to show that the tax deducted has been remitted by the company</u> to the Collector-General…"* (emphasis added). The application of the provision is not limited, as contended for by the Appellant, to situations of "*deliberate*" non-remittance or where there are allegations of "*serious negligence*" by the director.

19. 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.*"

20. 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.

Determination

21. 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 – 2023 inclusive shall stand.

22. 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

23. 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

24. 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
16 June 2026