AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

101TACD2024

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against an amended assessment to income tax for 2016 raised by the Revenue Commissioners ("the Respondent") in the amount of €36,707.08.

2. In accordance with the provisions of sections 949U and 949AN of the Taxes Consolidation Act 1997 ("TCA 1997"), this appeal is determined without a hearing.

Background

3. The Appellant is a practising [redacted] and a sole trader. She entered into an agreement with [redacted] ("the company"). The Appellant was a director and 99% shareholder of the company. She stated that the purpose of the agreement with the company was to provide various administrative and practice supports to her [redacted] practice. She paid a fee to the company for the services provided to her, which she claimed as a deduction under section 81(2) of the TCA 1997. The Respondent disallowed the deduction, on the ground that the expenses incurred by the Appellant were not wholly and exclusively laid out or expended for the purposes of the trade or profession.

4. The Respondent previously raised an amended assessment to income tax on the Appellant for 2014, in the amount of €112,455.68. The amended assessment arose from very similar circumstances as pertaining to this appeal; i.e. the Appellant paid a fee to the company for practice and administrative supports provided to her in the course of her [redacted] practice, which the Respondent disallowed as a deduction. The Appellant appealed against the 2014 assessment to the Commission. That appeal was given the reference number [redacted].

5. A hearing was held in [redacted] before Commissioner Gallagher. The Appellant provided oral evidence at the hearing. On 22 August 2022, the Commissioner issued her determination. In that determination, the Commissioner made the following material findings of fact:

> "*37. Based on the evidence, I find as a material fact that the Appellant identified no benefit or gain to the [redacted] trade ([redacted] for the expenditure incurred for services provided by [redacted] Post-acquisition of the services, [redacted] operated in precisely the same manner as before. The non-[redacted]/admin work continued to be performed by the Appellant and there was no advantage, added resource, efficiency or gain acquired by the [redacted] for the substantial expense incurred to [redacted]*
>
> *38. In accordance with the Appellant's evidence, I find as a material fact that payment of the sum €220,000 to the company was motivated by the Appellant's desire to provide for and ameliorate her pension*."

6. The Commissioner concluded as follows:

> "*61. The Respondent submitted that the filing, the photocopying, the placing of advertisements, the organising and all other tasks that were not [redacted] services could have been performed by the Appellant as part of her [redacted] practice, as these tasks heretofore had been performed. When asked in evidence why she did not continue performing the work herself, as principal [redacted] in her practice she stated; : 'I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide for a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this. .. '*
>
> *62. It is clear from the evidence that the Appellant did not fully comprehend the scope of the 'wholly and exclusively' test contained in section 81 TCA 1997. In particular, the Appellant failed to understand that her objective in expensing her own work through*

the company to avail of a tax deduction to provide for her pension, would be fatal to her claim for a deduction under section 81(2) TCA 1997.

63. In addition, it is notable that after the trade incurred the substantial expense of €220,000 (66% of turnover for that year, which was €331,667) the trade operated in precisely the same manner as before it incurred the expense, with the Appellant performing all non-[redacted]/admin work in addition to the [redacted] work. No identifiable benefit, resource or advantage was acquired by the trade notwithstanding the substantial expense incurred. It is clear that the expenditure was not expended for the purposes of the trade as no trading purpose was identified on the evidence.

64. For the reasons set out above, I determine that the expense of €220,000 is disallowable, not being money wholly and exclusively laid out or expended for the purpose of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

65. The Appellant has failed to meet the requirements of the legal test contained in section 81(2) TCA 1997, and has failed to discharge the onus of proof in this appeal.

66. As the Appellant has not shown that the amended notice of assessment to tax in the sum of €112,455 is incorrect, the assessment shall stand."

7. Before her conclusions, the Commissioner also noted, in passing, that the Appellant had sought to challenge the validity of the amended assessment, but stated that this was not a matter within the jurisdiction of the Commission.

8. [redacted]

9. [redacted]

10. [redacted]

11. [redacted].

12. Returning to this appeal (24/22), the Respondent raised the amended assessment on 8 December 2021 in respect of the income tax year 2016, in the amount of €36,707.08. On 4 January 2022, the Appellant appealed against the amended assessment to the Commission. In her Notice of Appeal, the Appellant stated that

> "*3. The tax liability of €36,707.08 arises as a direct consequence of the disallowance, by Revenue, of a business expense of [the Appellant] in the amount of €77,641 (Consultancy / Professional Fees), taken as a deduction in arriving at the amount of profits assessable on [Appellant] from her profession as a* [redacted] *in the 2016 tax year of assessment. The net adjustment to assessable profits as per the Amended Notice is therefore an increase of €77,641*."

13. Furthermore, the Appellant stated that

> "*5. Section 959U TCA 1997 provides for self assessment by a Revenue officer where a "chargeable person … delivers a return but does not include a self assessment in the return". [The Appellant], being a "chargeable person" delivered an Income Tax Return for the year ending 31 December 2016 to Revenue which included a "self assessment". An acknowledgement and details of the Self Assessment was issued to [the Appellant] by Revenue on 16 November 2017 (the 'Self Assessment Notice'), a copy of the Self Assessment Notice is attached. [The Appellant] did not, subsequent to 16 November 2017, amend the Income Tax Return for the year ending 31 December 2016 as was submitted by her to Revenue on 16 November 2017. Therefore, as (i) [the Appellant] included a Self Assessment in her Income Tax Return for the year ending 31 December 2016 and (ii) the Amended Notice is not based on statements and particulars specified in [the Appellant's] Income Tax Return (amended or otherwise) for the year ending 31 December 2016 it does not constitute a valid Notice of Assessment issued in accordance with Section 959U TCA 1997*."

14. In her Outline of Arguments, which was submitted on 30 March 2023 [redacted], the Appellant stated *inter alia* that

> "*The Appellant entered into an agreement with [the company], a company in which [the Appellant] is the principal shareholder and a director, to provide certain services to [the Appellant's* [redacted] *practice]. The services that [the company] was engaged to provide to [the Appellant's* [redacted] *practice] included:*

- *Practice Support [Excluding [redacted] Services]*
- *General Administration*
- *Franchising Support*
- *Website*
- *Marketing / PR*
- *Advertising / Publicity*

In this regard [the Appellant's [redacted] practice] engaged a trading company to provide various business related support services etc. to the [redacted] practice. The business relationship between [the Appellant's [redacted] practice] and [the company] is bona fide and is also in compliance and in accord with [redacted]."

15. The Appellant contended that the fee paid by her to the company was a deductible expense pursuant to section 81(2) of the TCA 1997.

16. In the Respondent's Outline of Arguments, which were submitted on 22 February 2024 [redacted], counsel stated that

"*The Respondent is unaware of any new facts or matters that might be raised on this appeal which are materially different to the First Appeal. In this regard, and importantly, the grounds of appeal do not differ from the First Appeal…It must be assumed therefore that the Appellant's grounds of appeal – and the facts alleged – will be the same as those which arose in the First Appeal. This being so, the result can only be the same, that the facts and circumstances surrounding the purported expense are such as to lead to the conclusion that they were not incurred wholly and exclusively for the purposes of trade (if they were incurred at all, which is not accepted), and that the Amended Assessment which was made on this basis, must stand*.

[…]

Assuming that the Respondent's [sic] case on appeal is the same as in the First Appeal, the Respondent's position, [redacted] is as before; that the purported expense incurred by [the Appellant's [redacted] practice] (which is not accepted as fact, since no evidence of payment was given and which remains to be established as fact) was not wholly and exclusively laid out or incurred for the purposes of trade – which requirement is confirmed by the provisions of s. 81 [redacted]

17. On 27 February 2024, the Commission emailed the parties to state that it was intended to determine the appeal without a hearing pursuant to section 949AN, having regard to the Commission's determination in [redacted] The parties were advised that if they disagreed with the proposed approach, they should provide arguments within 21 days. The determination in [redacted] was attached to the email.

18. On 18 March 2024, the Appellant's agent asked for a stay to be placed on the appeal for the purpose of settlement negotiations with the Respondent. No arguments against proceeding to determine the appeal under section 949AN were provided. On 2 April 2024, the Respondent objected to a stay and requested that this appeal be determined under section 949AN.

19. On 4 April 2024, the Commission notified the parties that the Commissioner did not consider that a stay was appropriate, and that any negotiations between the parties could take place concurrently to the appeal being progressed. A final 14 days was allowed to the Appellant to provide reasons, if she wished, why the appeal should not be determined under section 949AN. The Appellant did not respond to this email.

20. On 25 April 2024, the Commission notified the parties that the Commissioner had noted the following from the Appellant's Outline of Arguments:

> "*The Consultancy Fees totalling €77,641 consist of fees amounting to €16,665 in aggregate which relate to* [redacted] *fees, fees paid to other* [redacted] *firms* [redacted] *in relation to* [redacted] *etc. – it is understood based on previous engagement with the Office of the Revenue Commissioners ('Revenue') that there is no tax deductibility issue with such fees.*
> *The issue raised by Revenue is in respect of the balance of the Consultancy Fees i.e. €60,976, which relates to a fee for services provided to [the Appellant's* [redacted] *practice] by [the company].*"

It was further noted that this aspect of the Appellant's submission had not been addressed in the Respondent's Outline of Arguments, nor was a similar argument raised in the earlier appeal, [redacted].

21. On 22 May 2024, the Appellant provided a schedule of claimed deductions which totalled €15,275 (rather than €16,665 as stated in her Outline of Arguments), and confirmed that the balance of the disputed sum (i.e. €62,366) concerned the fee paid to the company. On 4 June 2024 the Respondent confirmed that it accepted that the sum of €15,275 was deductible under section 81(2) of the TCA 1997, and asked that the Commissioner

"*proceed to determine the quantum of the assessment on the basis that the amount of €15,275 relates to allowable expenses of the Appellant's trade meeting the requirements of section 81(2) of the TCA 1997*."

22. Therefore, this determination considers the amended assessment for 2016 in the amount of €36,707.08, which arose on foot of the disputed deduction of expenses totalling €77,641. However, expenses in the amount of €15,275 have now been agreed, leaving a balance of disputed expenses of €62,366.

Legislation and Guidelines

23. Section 81(2) of the TCA 1997 states *inter alia* that

"*Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of -*

(a) *any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession…*"

24. Section 949U of the TCA 1997 states that:

"*(1) Subject to subsection (3), the Appeal Commissioners shall not be required to adjudicate on a matter under appeal by way of a hearing and may, where they consider it appropriate, adjudicate on the matter solely by way of—*

(a) the consideration of a notice of appeal, a statement of case or any other written material provided by a party,

(b) the holding of discussions with a party, or

(c) any other means they consider appropriate.

(2) Where the Appeal Commissioners consider that it is appropriate to adjudicate without a hearing, they shall notify the parties in writing of their intention to do so.

(3) Notwithstanding subsection (1) but subject to section 949AN(3), the Appeal Commissioners shall adjudicate by way of a hearing where a party requests a hearing by notifying the Appeal Commissioners in writing within 21 days after the date of the notification referred to in subsection (2)."

25. Section 949AN of the TCA 1997 states that

"*(1) Subject to subsection (2), in adjudicating on and determining an appeal (in this section referred to as a "new appeal"), the Appeal Commissioners may—*

(a) have regard to a previous determination made by them in respect of an appeal that raised common or related issues, and

(b) if they consider it appropriate, in the light of such a determination, determine the new appeal without holding a hearing.

(2)Where the Appeal Commissioners wish to act in accordance with subsection (1), they shall—

(a) send a copy of the previous determination referred to in that subsection to the parties in a way that, in so far as it is possible, does not reveal the identity of any person whose affairs were dealt with on a confidential basis during the proceedings concerned (being proceedings that were not held in public),

(b) request that each of the parties submit arguments to them within 21 days after the date of the request in relation to why it would not be appropriate to have regard to the previous determination in determining the new appeal, and

(c) request that each of the parties state whether the party wishes the Appeal Commissioners to hold a hearing and, where a party so wishes, to require that the party explain why such a hearing is considered to be necessary or desirable.

(3) Notwithstanding section 949U, the Appeal Commissioners may determine the appeal without holding a hearing where -

(a) no response is received from a party within the period referred to in subsection (2) (b), or

(b) a response is received but the Appeal Commissioners are not persuaded that it would be appropriate to disregard the previous determination referred to in subsection (1) that it is necessary to hold a hearing to determine the new appeal."

Submissions

Appellant

26. The Appellant submitted that she agreed a fee with the company for services provided by the company to her in support of her [redacted] practice. She claimed that the fee was wholly and exclusively laid out or expended for the purposes of her trade or profession in accordance with section 81(2) of the TCA 1997.

27. The Appellant also submitted that the notice of amended assessment did not conform with section 959U of the TCA 1997 as (i) she included a self assessment in her income

tax return, and (ii) the amended assessment was not based on statements and particulars specified in her income tax return. Therefore the amended assessment was not valid.

28. The Appellant did not provide any submissions differentiating the circumstances in this appeal with those previously considered by the Commission in [redacted].

Respondent

29. The Respondent submitted that the amended assessment considered in [redacted] was made on precisely the same basis as the amended assessment herein. There was no difference in the facts between the two appeals. [redacted]

30. Consequently, the fee claimed by the Appellant was not wholly and exclusively laid out or expended for the purposes of her trade or profession. Additionally, the Commission did not have jurisdiction to consider the validity of the amended assessment.

Material Facts

31. Having regard to the submissions received from the parties, to the correspondence before him and to the material facts as found by the Commission in [redacted], the Commissioner makes the following findings of material fact:

    31.1. The Appellant is a [redacted] and a sole practitioner. She entered into an agreement with the company to provide her with practice and administrative support. The Appellant was a director and 99% shareholder of the company.

    31.2. In 2016, the Appellant paid the company a fee of €62,366, which she sought to deduct from her assessment to income tax on the ground that the fee was wholly and exclusively laid out or expended for the purposes of her trade or profession.

    31.3. The Appellant had previously appealed against an amended assessment for 2014, in the amount of €112,455.68. That amended assessment had been raised on a similar basis to the amended assessment in this appeal; i.e. the Appellant had paid the company a fee of €220,000 for services provided by the company to her in support of her [redacted] practice. That appeal was given the record number [redacted].

    31.4. In the determination of [redacted], the Commissioner found that there was no advantage acquired by the Appellant for the expense incurred by her to the company, and that the payment of the sum was motivated by the Appellant's

desire to ameliorate her pension. The Commissioner determined that the fee was not wholly and exclusively laid out or expended for the purposes of the Appellant's trade or profession, and she disallowed the deduction and affirmed the amended assessment.

31.5. [redacted]

31.6. The submissions made by the Appellant in both [redacted] and this appeal, as to why the fee paid by her to the company should be allowed as a deductible expense, were essentially identical. The Appellant had not provided any submissions seeking to differentiate the circumstances in this appeal from those pertaining to [redacted].

31.7. The Respondent accepted that expenses of €15,275 claimed by the Appellant, which were separate to the fee paid by her to the company but which were included in the amended assessment to income tax for 2016, were allowable expenses under section 81(2) of the TCA 1997.

Analysis

32. The burden of proof in this appeal rests on the Appellant, who must show that the amended assessment raised by the Respondent was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*"

33. As set out herein, the Appellant has sought to deduct the fee paid by her to the company as an allowable expense under section 81(2) of the TCA 1997. The Respondent had disallowed the deduction and raised an amended assessment for 2016 against her accordingly. The Appellant had previously appealed against an amended assessment for 2014 on the same basis. The Commission had found that the fee paid by her to the company was not an allowable expense under section 81(2). [redacted]

34. Section 949AN of the TCA 1997 permits the Commission, in appeals raising "*common or related*" issues, to "*have regard*" to a previous determination made by it. The Commissioner is satisfied that this appeal raises "*common or related*" issues to those in [redacted]. Accordingly, the parties were notified by the Commission that it was intended to determine the matter pursuant to section 949AN, and they were notified that, if they did not agree, they should submit arguments as to why regard should not be had to the determination in [redacted]

35. The Respondent agreed to this appeal being determined pursuant to section 949AN. No submissions were received from the Appellant seeking to differentiate this appeal from that in [redacted] nor arguing that this appeal should not be determined pursuant to section 949AN. The only submission received in response to the Commission's notification was a request for a stay of the appeal. This request was rejected by the Commissioner, and the Appellant was allowed a further 14 days to object to the proposed course of action. No objection, or submission on why the Commissioner should not have regard to the determination in [redacted], was received from or on behalf of the Appellant.

36. The Commissioner has considered the submissions of the Appellant in this appeal compared to her submissions in [redacted], and he is satisfied that they are essentially identical in respect to why the claimed deduction should be allowed under section 81(2). The Commissioner is satisfied that it is appropriate for him to have regard to the determination in [redacted]. He notes that Commissioner Gallagher in that appeal had the benefit of hearing oral evidence from the Appellant. He notes further that she was satisfied that the fee incurred by the Appellant to the company was not wholly and exclusively laid out or expended for the purposes of the Appellant's trade or profession. [redacted]

37. Additionally, the Commissioner notes that the Appellant has sought to challenge the validity of the amended assessment, [redacted]

38. Consequently, the Commissioner finds that the fee of €62,366 paid by the Appellant to the company in 2016 was not wholly and exclusively laid out or expended for the purposes of the Appellant's trade or profession, and that therefore it was not an allowable expense

under section 81(2) of the TCA 1997. Additionally, the Commissioner finds that he does not have jurisdiction to consider the validity of the amended assessment raised by the Respondent on the Appellant.

39. However, the Commissioner notes that the Respondent has accepted that expenses of €15,275 claimed by the Appellant, which were separate to the fee paid by her to the company but which were included in the amended assessment to income tax for 2016, were allowable expenses under section 81(2) of the TCA 1997.

40. Therefore, the Commissioner determines that the amended assessment for 2016 should be reduced by way of removal of the amount of €15,275 from the income assessed to additional income tax. For the avoidance of doubt, the fee of €62,366 paid by the Appellant to the company remains liable to income tax.

Determination

41. In the circumstances, and based on a review of the facts and a consideration of the submissions and material provided by both parties, the Commissioner is satisfied that the fee of €62,366 paid by the Appellant to the company is not an allowable deduction under section 81(2) of the TCA 1997. However, expenses in the total amount of €15,275 are allowable deductions, and the amended assessment should be reduced accordingly.

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

Notification

43. 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

44. 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
21 June 2024