



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

120TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) in relation to a Contract Confirmation dated [REDACTED] November 2023 (“Contract Confirmation”) issued by the Revenue Commissioners (“the Respondent”) in accordance with section 530I of the TCA 1997 in respect of Relevant Contracts Tax (“RCT”).
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is adjudicated and determined without a hearing.
3. The Appellant submitted a Notice of Appeal and copy Contract Confirmation to the Commission on [REDACTED] November 2023. Thereafter the Appellant was invited by the Commission to submit a Statement of Case. The Appellant replied to the Commission on [REDACTED] January 2024 and advised that it felt it had provided all of the necessary information in relation to its case as part of the original appeal documentation and it did not feel it had anything further to add. The Commission received a Statement of Case from the Respondent on [REDACTED] February 2024. All material submitted to the Commission has been considered and assessed by the Appeal Commissioner before making this determination.

Background

4. The Appellant submits it is a company that is not engaged within the construction sector and that its work is not purely based on the application of stainless steel to the construction of buildings. The Appellant submits that it is a provider of equipment for [REDACTED].
5. The Appellant submits it was engaged by [REDACTED] (“the Contractor”) to supply [REDACTED] to the Contractor’s customer [REDACTED] (“the Customer”) on a site identified on the Contract Confirmation as [REDACTED] (“the Site”).
6. In the Contract Confirmation, the Respondent stated that the Contractor identified therein as the “*principal contractor*”, notified the Respondent that the Appellant was a subcontractor in respect of a contract for the Customer at the Site. The Respondent determined that further to the provisions of section 530 of the TCA 1997 the rate of RCT which applied to the Appellant as a subcontractor was 35% (thirty five percent) and that the Contractor as principal contractor had been advised of this by the Respondent.

and another NAMA group entity) whereby a person (in this Chapter referred to as “the contractor”) is liable to another person (in this Chapter referred to as “the principal”)—

(a) to carry out relevant operations,

(b) to be answerable for the carrying out of such operations by others, whether under a contract with the contractor or under other arrangements made or to be made by the contractor, or

(c) to furnish the contractor’s own labour or the labour of others in the carrying out of relevant operations or to arrange for the labour of others to be furnished for the carrying out of such operations,

“relevant payment” means a payment made by a principal to whom section 530A applies in respect of a relevant contract;

“relevant operations” means construction operations, forestry operations or meat processing operations, as the case may be;

“subcontractor” means the contractor under a relevant contract where the principal under that contract is a person to whom section 530A applies;

10. Section 530A of the TCA 1997, Principal to whom relevant contracts tax applies, provides inter alia as follows:

Subject to subsections (2) and (3), this section applies to a principal who is—

(a) in respect of the whole or any part of a relevant contract, the contractor under another relevant contract,

(b) a person—

(i) carrying on a business that includes the erection of buildings or the development of land (within the meaning of section 639(1)) or the manufacture, treatment or extraction of materials for use, whether used or not, in construction operations.

11. Section 530F of the TCA 1997, Obligation to deduct tax, provides inter alia as follows:

A principal to whom a deduction authorisation is issued under section 530D shall deduct tax from the relevant payment concerned only in accordance with the terms of the deduction authorisation.

12. Section 530I of the TCA 1997, Determination of rates, provides inter alia as follows:

(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

The Appellant's submissions:

13. The Appeal Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal:

"Our appeal is based on the fact we are not within the construction sector, and our nature of work is not purely based on the application of stainless steel to the construction of buildings. We are a provider of equipment for [REDACTED] solutions, including [REDACTED]. On this particular instance, we have received a contract from [REDACTED] to supply [REDACTED] to the customer [REDACTED] on this site. A [REDACTED] is a piece of equipment which is [REDACTED] made from stainless steel, however it is a moveable piece of equipment and can be easily moved to another location [REDACTED] is designed to provide [REDACTED] during the [REDACTED] [REDACTED]. It is an assembled piece of equipment made up of [REDACTED] [REDACTED] [REDACTED]. Given the information provided concerning the nature and use of the product, this is a piece of equipment that is used in specific [REDACTED] operations, and is therefore not for the purposes of building construction under the nature of stainless steel work. Given that it is moveable equipment for specific use, it is therefore not in the scope of RCT and therefore the RCT has been incorrectly applied. [REDACTED] [REDACTED]

Material Facts

16. Having considered and assessed the documentation submitted by the parties in this appeal, the Appeal Commissioner makes the following findings of material fact:
 - 16.1. the Appellant was engaged as a subcontractor by the Contractor as principal contractor to supply [REDACTED] to the Customer on the Site;
 - 16.2. a [REDACTED] is designed to provide operator protection during the [REDACTED]. It is an assembled piece of equipment made of [REDACTED].
A [REDACTED] can be a moveable piece of equipment and it can be reinstalled at another location where it can be examined for testing before operations commence;
 - 16.3. the Respondent made a determination as is evidenced in the Contract Confirmation that the Contractor was the principal contractor for the purposes of RCT;
 - 16.4. the Respondent made a determination as is evidenced in the Contract Confirmation that the Appellant was a subcontractor for the purposes of RCT;
 - 16.5. the Respondent made a determination as is evidenced in the Contract Confirmation that for the purposes of section 530I of the TCA 1997, the rate of RCT to be applied to relevant payments made to the Appellant as a subcontractor was 35% (thirty five percent) and this rate of tax would apply to relevant payments to be made to the Appellant by all principal contractors until a further determination is made by the Respondent;
 - 16.6. the Respondent specified in the Contract Confirmation that for the Appellant to appeal the Respondent's determination therein the Appellant must submit "...a copy of this Notice of Determination" with the Notice of Appeal to the Commission.

Analysis

17. The Appeal Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court

case of *Menolly Homes Ltd v Appeal Commissioners and Anor*. [2010] IEHC 49, wherein at paragraph 22, Charleton, J. stated:

“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”.

18. The Appeal Commissioner also refers to paragraph 12 of the High Court case of *Menolly Homes*, wherein Charleton. J, stated:

“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...”

19. The Appeal Commissioner in consideration and in assessment of all documentation and information, notes the Appellant is a company involved and engaged in the fabrication of stainless steel equipment and it was engaged by the Contractor to supply [REDACTED] [REDACTED] to be used by the Customer at its [REDACTED] plant at the Site.
20. The Appeal Commissioner in consideration and in assessment of all before the Commission, notes that on [REDACTED] November 2023, the Respondent issued the Contract Confirmation which determined that the rate of deduction of monies payable under the contract between the Contractor and the Appellant was 35% (thirty five percent) on the basis that the Respondent deemed the Contractor to be a principal contractor further to the provisions of section 530 of the TCA 1997.
21. The Appeal Commissioner in consideration and in assessment of all before the Commission, notes that the Appellant filed its Notice of Appeal on [REDACTED] November 2023 appealing against the determination in the Contract Confirmation and submitted that the Respondent had erred in its determination as the Appellant was not engaged in the construction industry and that RCT had been wrongly applied to the payments due to it under the contract with the Contractor.
22. The Appeal Commissioner in consideration and in assessment of all before the Commission, notes the Respondent submits that the Contractor is the principal for the purposes of RCT, in accordance with section 530 of the TCA 1997 and that the Appellant is the subcontractor. The Appeal Commissioner notes that section 530 of the TCA 1997 provides that “*subcontractor*” means the contractor under a relevant contract where the principal under that contract is a person to whom section 530A of the TCA 1997 applies

and “*the principal*” has the meaning assigned to it by the definition of “*relevant contract*”. The Appeal Commissioner notes that “*relevant contract*” means a contract whereby a person (referred to as “*the contractor*”) is liable to another person (referred to as “*the principal*”), to carry out relevant operations.

23. The Appeal Commissioner in consideration and in assessment of all before the Commission, notes that the Respondent refers to its Tax and Duty Manual entitled “*Relevant Contracts Tax: Relevant Operations*”, Part 18-02-01” in support of its submissions to the Commission, wherein it states that “*RCT applies to payments made by a principal contractor to a subcontractor under a relevant contract i.e. a contract for the carrying out of, or the supply of labour for the carrying out of, relevant operations in the construction, meat processing and forestry industries. Since 2012 RCT operates as an electronic system and all interaction between the principal contractor and Revenue is through Revenue’s Online Service (ROS). It is important to note that RCT applies only where the relevant operations are performed under a relevant contract with a principal who is obliged to operate RCT as set out in the RCT legislation. For example, if a private householder engages a builder to build an extension this is technically a relevant contract. The builder is working as a contractor for the householder and carrying out a relevant operation in the construction industry. However, because the householder is not a principal to whom RCT applies, as set out in section 530A Taxes Consolidation Act 1997, RCT does not apply to any payments made to the builder. However, where that builder in turn engages subcontractors to carry out some of the work, the builder would be obliged to operate RCT on payments to those subcontractors.*”
24. The Appeal Commissioner further notes the Respondent in its Tax and Duty Manual entitled “*Relevant Contracts Tax: Relevant Operations*”, Part 18-02-01” at paragraph 3 states that “*Relevant operations*” are:
- “*Relevant operations are defined in section 530 Taxes Consolidation Act, 1997 and mean construction operations, forestry operations or meat processing operations*”.
- “*Construction operations mean operations of any of the following descriptions:*
- (c) “*the installation, alteration or repair in any building or structure of systems of heating, lighting, air-conditioning, soundproofing, ventilation, power supply, drainage, sanitation, water supply, burglar or fire protection. This paragraph applies to the installation, alteration or repair of systems, it would not cover the installation, alteration or repair to “add-ons” or stand-alone packages to systems already in place in a building or structure. For example, while the installation of a fire alarm system would be covered, the placing of a few fire extinguishers in a building would not be. Any alteration or repair work to a*

fire alarm system or a system of water supply (including the installation of a meter on such a system) would, of course, be considered a construction operation”.

Determination

25. For the avoidance of doubt the Appeal Commissioner in consideration and in assessment of all documentation, finds that the Contract Confirmation herein is a Notice of Determination made by the Respondent further to the provisions of the TCA 1997 and for the purposes of making an appeal to the Commission.
26. Having considered and assessed all the material, documentation and submissions furnished by the parties, the Appeal Commissioner finds that the Appellant was engaged as a subcontractor by the Contractor in their capacity as principal contractor to supply and install [REDACTED] at the Customer’s premises on the Site. Having considered and assessed the submitted purpose and effect of the [REDACTED], the Appeal Commissioner finds that the Appellant was engaged in “*construction operations*” as the contract between the Appellant and the Contractor was in respect of the (c) “*the installation, alteration or repair in any building or structure of systems of heating, lighting, air-conditioning, soundproofing, ventilation, power supply, drainage, sanitation, water supply, burglar or fire protection*”.
27. Having considered and assessed all the material, documentation and submissions furnished by the parties, the Appeal Commissioner finds on the balance of probabilities that the Appellant has not established that it is not a subcontractor of the Contractor for the purposes of RCT.
28. Having considered and assessed all the material, documentation and submissions furnished by the parties the Appeal Commissioner finds, on the balance of probabilities, that the Appellant has not established that the Respondent was incorrect in its determination in the Contract Confirmation. Accordingly, and for the reasons set out above, the Appeal Commissioner determines that the Respondent was correct in making the Contract Confirmation dated [REDACTED] November 2023 determining that the rate of deduction for RCT on contract payments made by the Contractor as principal contractor to the Appellant as subcontractor was to be 35% (thirty five percent) in accordance with section 530I of the TCA 1997.
29. The Appeal Commissioner for the reasons set out above finds that the Appellant has not been successful in its appeal and the grounds of appeal in the Notice of Appeal are refused.

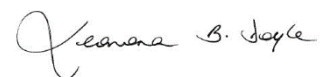
30. The Appeal Commissioner acknowledges that the Appellant was within its rights to seek an appeal of the Respondent's determination in the Contract Confirmation. The Appeal Commissioner is cognisant that the Appellant may be disappointed with the outcome of its appeal.
31. This Appeal is determined in accordance with the provisions of Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

32. 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.
33. 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.
34. 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

35. 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.



Leonora B. Doyle
Appeal Commissioner
2nd July 2024