



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

82TACD2024

[REDACTED]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) 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 Relevant Contracts Tax (“RCT”) **Notification of Determination** (“the notification”) dated **13 January 2024**, issued by the Revenue Commissioners (“the Respondent”), in accordance with section 530I of the Taxes Consolidation Act 1997 (“the TCA 1997”). The notification issued by the Respondent outlined that the Appellant’s RCT deduction rate was determined to be 20%.
2. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Notice of Appeal and accompanying documentation in support of its appeal. No Statement of Case was submitted by the Appellant, in circumstances where it stated in correspondence to the Commission that it had no further submissions to make in addition to its Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this Determination

## Background

4. The Appellant is a specialist equipment crane/piling rig hire company based in the United Kingdom (“UK”) and has UK tax residency.
5. The Appellant submits that it hired its specialist equipment to [REDACTED] (“the customer”).
6. On **19 September 2023**, the customer deducted 35% RCT from the Appellant’s payment.
7. The Appellant contends that the customer has incorrectly treated the Appellant as a subcontractor, in circumstances where the Appellant provided the customer with a trained and qualified operator to operate the specialist equipment. The Appellant submits that it is not a subcontractor, it is a hire company only. The Appellant states that *“only a fully qualified and extensively trained operator is able to operate our specialist equipment safely”*.
8. The Appellant requests that the RCT in the sum of €22,073.42 is repaid to the Appellant.
9. The Respondent argues that the customer is deemed to be a principal for the purposes of **section 530 TCA 1997** and the nature of the works qualify for the RCT.

10. The Respondent submits that the Appellant has since registered for RCT and the amount withheld is available for refund once all else is in order. The Respondent states that this includes the completion of the RCT Questionnaire, in addition to furnishing the Respondent with bank details, in order that the repayment can be made to the Appellant.

11. On **25 January 2024**, the Appellant duly appealed to the Commission.

### **Legislation and Guidelines**

12. The legislation relevant to this appeal is as follows:

13. Section 530 TCA 1997, Interpretation (Chapter 2), provides *inter alia* as follows:

*“the principal” has the meaning assigned to it by the definition of “relevant contract”;*

*“relevant contract” means a contract (not being a contract of employment, or a contract between NAMA and a NAMA group entity or a contract between a NAMA group entity 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;*

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

- (1) 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,*

15. Section 530F TCA 1997, Obligation to deduct tax, provides *inter alia* as follows:

- (1) *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.*

16. Section 530I 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**

### *Appellant's submissions*

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

*"We are a specialist equipment crane/piling rig hire company. We hired our specialist equipment to [the customer]. Only a fully qualified and extensively trained operator*

*is able to operate our specialist equipment safely. On 19/09/2023 our customer [the customer] deducted 35% Sub-Contractor tax from our payment. We are not a subcontractor; we are a hire company only. We do not take on any sub-contractor work. I believe because [the customer] required a trained and qualified operator to operate our UK owned specialist equipment we have been treated as a sub-contractor which we are not. Our operator is a UK national and is paid through UK payroll PAYE. We therefore kindly request the deducted tax €22,073.42 is paid back to us at your earliest convenience. Our bank details are attached document Page 3 RCT Claim Form. Can you kindly confirm payment will be made to us for this oversight. We will not be working in Ireland again.*

*I have attached a certificate of UK tax residence for your reference, IE tax repayment claim form RCT IC3 on page 3 of the attached PDF, stamped and endorsed by HMRC UK to include our bank details for repayment.”*

#### *Respondent's submissions*

18. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

*“The Appellant received a Relevant Contracts Tax (RCT) Notification of Determination dated 13<sup>th</sup> January 2024. This outlined that their RCT deduction rate was determined by Revenue to be 20%*

*In their appeal dated 25<sup>th</sup> January 2024 the appellant states that they do not believe the works carried out constitute subcontracting activity and so RCT should not apply.*

*The legislation covering this matter is Section 530A and 530F of the TCA 1997. This sets out who is considered a principal contractor for RCT purposes and their obligations to deduct tax on relevant contracts.*

*Section 530A subsection 1(b)(i) states:*

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

*(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,*

*The principal in this case, [the customer] are deemed to be a principal contractor for the purposes of S530 and the nature of the works as described qualify for RCT.*

*A further description of Revenue's application of this legislation can be found in the Tax and Duty Manual – Relevant Contracts Tax: Relevant Operations Part 18-02-01.*

*The appellant has since registered for RCT and the amount withheld is available for refund once all else is in order. This includes the fulling of the RCT Questionnaire and providing Revenue with bank details so that monies can be transferred.”[sic]*

### **Material Facts**

19. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
  - 19.1. The Appellant is a specialist equipment crane/piling rig hire company.
  - 19.2. The Appellant hired its specialist equipment to the customer.
  - 19.3. The customer is the principal for the purposes of RCT.
  - 19.4. Only a fully qualified and extensively trained operator is in a position to operate the Appellant's specialist equipment safely.
  - 19.5. The Appellant provided to the customer a trained and qualified operator to operate the specialist equipment which the customer hired from the Appellant.
  - 19.6. The customer as the principal deducted 35% RCT from the Appellant's payment.
  - 19.7. The Appellant requests that the sum of €22,073.42 is repaid to the Appellant.

### **Analysis**

20. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 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”.*

21. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

22. The Appellant's appeal relates to a RCT Notification of Determination issued by the Respondent on 13 January 2024, in accordance with section 530I TCA 1997. The notification states that the Appellant's rate of RCT as a subcontractor has been determined to be 20%. Furthermore, the notification informs the Appellant that *"this rate of tax will apply to relevant payments made to you..... by all principals..."* The Commissioner observes that the notification requests that the Appellant contact its branch *"for this rate change reason"*.
23. The Commissioner understands that the factual background in this appeal is such that the Appellant is a company that hired its specialist equipment to its customer in [REDACTED] Ireland. However, not only did it hire such equipment to the customer, it also provided a trained and qualified operator to operate the specialist equipment, which the customer hired from the Appellant.
24. The Appellant submits that on **19 September 2023**, the customer deducted 35% RCT from the Appellant's payment. The Appellant argues that it is not a subcontractor. Rather, it is a hire company only and has been incorrectly treated as a subcontractor by the customer. The Appellant submits that the operator of the specialist equipment is a UK national and is paid through the *"UK payroll PAYE"*. The Appellant claims that it will not be working in Ireland again and submits a certificate of UK tax residence dated **3 October 2023**, with its Notice of Appeal.
25. It is the case that the customer retained the amount of 35% of the payment due to the Appellant and it is on this basis that the Commissioner understands the Appellant to be seeking repayment of the amount of €22,073.42.
26. The Respondent argues that the customer is the principal contractor for the purposes of RCT, in accordance with **section 530 TCA 1997**. Thus, the Appellant is the subcontractor. Section 530 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 applies and *"the principal"* has the meaning assigned to it by the definition of "relevant contract". Moreover, *"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.



27. The Respondent is of the view that the nature of the works qualify for RCT, such that they are relevant operations in accordance with section 530 TCA 1997. In the course of its submissions, the Respondent referred the Commissioner to its **Tax and Duty Manual entitled “Relevant Contracts Tax: Relevant Operations”, Part 18-02-01**. The Commissioner has considered the manual in the course of determining this appeal.
28. The Commissioner notes in the introductory paragraph it states “*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.*” Moreover, the Commissioner observes that paragraph 4 entitled “Relevant operations carried out in the State” provides that “*RCT applies to all relevant operations carried out in the State.....*”
29. On **13 January 2024**, the Respondent issued a RCT Notification of Determination to the Appellant, in accordance with section 530I TCA 1997. The Respondent determined that the rate of RCT as a subcontractor is 20%. Furthermore, the Respondent submits that the Appellant has since registered for RCT and the amount withheld is available for refund once all else is in order, including that the Respondent completes the RCT Questionnaire and provides its bank details to the Respondent, in order that payment can be made.
30. In accordance with the principles espoused by Charleton J. in *Menolly Homes*, the burden of proof in a tax appeal is on the Appellant who must show on the balance of probabilities that the tax is not payable. Having considered the documentation and submissions furnished by the parties in this appeal, the Commissioner is satisfied that the Appellant has not shown on balance that the Respondent was incorrect to issue the RCT Notification of Determination. The Commissioner is satisfied that the Appellant has failed to establish that it is not a subcontractor for the purposes of RCT. Accordingly, the Commissioner finds that the Respondent was not incorrect to issue the RCT Notification of Determination, dated 13 January 2024.
31. Nonetheless, the Commissioner notes that the Respondent submits that the amount withheld is available for refund once certain administrative matters are resolved. The Commissioner would urge the Appellant to engage with the Respondent in this regard, and to resolve the outstanding repayment to the satisfaction of the parties.

### **Determination**

32. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeed in its appeal and has not shown on the balance of probabilities

that the Respondent was incorrect to issue the RCT Notification of Determination, dated 13 January 2024, in accordance with section 530I TCA 1997.

33. It is understandable that the Appellant will be disappointed with the outcome of its appeal. The Appellant was correct to check to see whether its legal rights were correctly applied.
34. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

### **Notification**

35. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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**

36. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
1 May 2024