



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

05TACD2025

Between

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] [REDACTED] (“the Appellant”) under sections 530I and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a decision by the Revenue Commissioners (“the Respondent”) to determine that a 20% rate of Relevant Contracts Tax (“RCT”) applied to the Appellant.
2. On 16 September 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties has objected or requested a hearing. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. RCT is a withholding tax that applies to certain payments by principal contractors to subcontractors in the construction, forestry and meat-processing industries. The rates of tax are 0%, 20%, and 35%.
4. On 11 April 2024, the Respondent wrote to the Appellant to inform it that the Respondent had determined that the Appellant’s rate of RCT as a subcontractor was 20%.
5. On 2 May 2024, the Appellant’s director submitted a Notice of Appeal to the Commission, together with a copy of the Respondent’s letter of 11 April 2024.
6. On 3 July 2024, the Respondent submitted a Statement of Case. On 12 September 2024, the Appellant’s director stated to the Commission that he had no further information to add to the appeal other than that provided in the initial appeal registration. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

7. The legislation relevant to this appeal is as follows:
8. Section 530E of the TCA 1997 provides:

“(1) 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.

(2) Any reference to a determination in subsection (1) is to the most recent determination made by the Revenue Commissioners under section 530I or as determined on appeal in accordance with that section, in respect of the subcontractor concerned.”

9. Section 530G of the TCA 1997 provides:

“(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) 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,

(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), or

(e) if relevant operations (being construction operations, forestry operations or meat processing operations, as the case may be) similar to those being carried out or to be carried out by that person were previously, or are being, carried out by another person (in this subsection referred to as the 'second-mentioned person'), and the second-mentioned person -

(i) is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,

(ii) is a company and the first-mentioned person is a partner in a partnership in which -

(I) a partner is or was able, or

(II) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 15 per cent of the ordinary share capital of the company, or

(iii) is a partnership and the first-mentioned person is a company in which -

(I) a partner is or was able, or

(II) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 15 per cent of the ordinary share capital of the company,

but this paragraph does not apply if the second-mentioned person concerned is a person to whom paragraphs (c) and (d) of subsection (1) refer.

(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.”

Submissions

Appellant

10. In the Notice of Appeal, the Appellant's director submitted:

“I have recently set up a [REDACTED] company. I have no employees and do not even draw a salary from the company for myself yet. I recently carried out some works for a principal contractor to the value of [REDACTED] which I was deducted 20% on [REDACTED] leaving my net at [REDACTED]. I have to pay a subcontractor who carried out the work for me [REDACTED] (he is at 0% RCT) also machine hire & transport from a separate company was [REDACTED] + my own fuel costs & company insurance obviously leaves me in the minus. As I stated above the company was formed less than 1 year

ago with no employees and no salary to myself so I cannot understand how a 20% RCT rate can be applied. This taxation will mean I will have to fold up the company as I cannot continue operating at a loss. I had other projects lined up to start with this principal contractor which I've had to renege on which has been detrimental to my reputation."

Respondent

11. In its Statement of Case, the Respondent submitted (among other things):

"The legislation covering this matter is Section 530G of the TCA 1997. This sets out the conditions under which the zero RCT rate may be awarded. Specifically, S530G subsection 2(b) stipulates that all a company's directors with a 15% shareholding or more must each have a satisfactory three year tax compliance history...

It is Revenue's determination that neither the company or its directors meet these conditions and that the zero rate is not applicable. The company was registered for Corporation Tax on the [REDACTED] 2023, so does not have three years of compliance to be assessed."

Material Facts

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 12.1. The Appellant is a limited company which was registered for Corporation Tax on [REDACTED] 2023.
- 12.2. On 11 April 2024, the Respondent informed the Appellant that it had determined that the Appellant's rate of RCT as a subcontractor was 20%.
- 12.3. On 2 May 2024, the Appellant submitted a Notice of Appeal.

Analysis

13. This appeal relates to the Respondent's decision to determine that a 20% rate of RCT applied to the Appellant. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.

14. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to determine that a 20% rate of RCT applied to the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [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”.

15. Section 530E of the TCA 1997 provides for three rates of RCT: 0%, the standard rate in force (20%), and 35%. The Appellant has appealed the Respondent’s determination that the standard rate of 20% RCT applied to the Appellant.
16. The rate of RCT lower than 20% is a 0% rate of RCT, which applies when the Respondent determines that section 530G of the TCA 1997 applies. For section 530G of the TCA 1997 to apply, a number of conditions must be met. In this appeal, the relevant condition is provided for in section 530G(1)(d) of the TCA 1997. Section 530G(1)(d) requires the subcontractor to have complied throughout the previous 3 years with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts and the Value-Added Tax Acts, in relation to the payment or remittance of taxes, interest and penalties; the filing of returns; and the supply, on request, of accounts or other information to a Revenue officer.
17. In its Statement of Case, the Respondent submitted that neither the Appellant nor its directors satisfied the requirement under section 530G(1)(d) to have a three year compliance history, with the Appellant having been registered for Corporation Tax on ■■■■■ 2023. In his Notice of Appeal, the director of the Appellant referred to the fact that he had “recently” set up a construction company, which was formed “less than 1 year ago”. At no point in this appeal did the director of the Appellant dispute that the Appellant was registered for Corporation Tax on ■■■■■ 2023 and the Commissioner has therefore found this to be a material fact. It follows that in circumstances where the Appellant was registered for Corporation Tax on ■■■■■ 2023, the Appellant cannot be said to have met the requirement to have a three year history of compliance for the purposes of satisfying section 530G of the TCA 1997.
18. The Commissioner notes that section 530G(3) of the TCA 1997 provides that section 530G also applies to a person who satisfies the Respondent that the matters referred to in section 530G(1) or (2) should be disregarded. However, no evidence has been presented to the Commissioner to show that the Appellant had satisfied the Respondent to disregard the requirements of section 530G(1) or (2).
19. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the business circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent’s

decision was correct. However, the Commissioner must apply the provisions of the legislation.

20. Finally, the Commissioner notes that it is open to the Appellant to have its rate of RCT reviewed and a lower rate applied at such time as the Appellant satisfies the requirements under section 530G of the TCA 1997.

Determination

21. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to apply a 20% rate of RCT to the Appellant, under section 530G of the TCA 1997.
22. This Appeal is determined in accordance with 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

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.

A handwritten signature in black ink, appearing to read "Jo Kenny", with a long horizontal flourish underneath.

Jo Kenny
Appeal Commissioner
21 October 2024