



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

27TACD2025

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”) 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 decision issued by the Revenue Commissioners (“the Respondent”), dated **14 August 2024**, in relation to Relevant Contracts Tax (“RCT”), in accordance with section 530G TCA 1997. The decision issued by the Respondent outlined that the Appellant’s RCT deduction rate was determined to be 20% and the Respondent refused the Appellant’s application for a zero rate of RCT.
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. In addition, the Appellant submitted a Statement of Case which built on its Notice of Appeal and which the Commissioner has considered. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this Determination

Background

4. The Appellant’s business description is that of a [REDACTED]
[REDACTED]
5. On **12 August 2024**, the Appellant, via the Respondent’s “MyEnquiries” system, requested that its rate of RCT be reduced to zero. The request was made on the basis that the Appellant understood that the three year period had not been reached before the rate can be reduced, but *“the RCT deduction is 20% of turnover, this is a burden on cashflow”*. [sic]
6. On **14 August 2024**, the Respondent replied via “MyEnquiries” to notify the Appellant that its RCT deduction rate was determined by the Respondent to be 20%. The Respondent stated that it had carried out a full review of the Appellant’s case, as requested. However, as the Appellant did not have the required qualifying compliance history for the previous three years, it did not meet the conditions to qualify for the zero rate of RCT. Therefore, the Respondent was unable to apply the zero rate at this time.
7. On **21 August 2024**, the Appellant duly appealed to the Commission.

Legislation and Guidelines

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

9. 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;

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

10. 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.*

11. Section 530G TCA 1997, Zero rate subcontractor, provides *inter alia* as follows:

- (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—*

.....

- (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—*

.....

- (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,*

.....

- (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*

12. 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

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

"Our client is on a RCT deduction rate of 20% - we request this be reverted to 0% - we are aware that the 3 year period has not been reached before the rate can be reduced but our client is a company and the rate of tax is 12.5% of profits - however the RCT deduction is 20% of turnover, this is a burden on cashflow."[sic]

Respondent's submissions

14. 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 Notification of Determination in relation to their Relevant Contracts Tax (RCT) dated 14th August 2024. This outlined that their RCT deduction rate was determined by Revenue to be 20%

In their appeal dated 21 August 2024, the appellant asserts that the 20% deduction rate will cause cashflow issues for their business.

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.

Section 530G subsection 2(b) states:

.....

It is [the Respondent'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 07 July 2022 so does not have three years of compliance to be assessed." [sic]

Material Facts

15. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
 - 15.1. The Appellant's business description is that of a [REDACTED].
 - 15.2. On 12 August 2024, the Appellant requested that its rate of RCT be reduced to zero. The request was made on the basis that "*the RCT deduction is 20% of turnover, this is a burden on cashflow*". [sic]
 - 15.3. On 14 August 2024, the Respondent notified the Appellant that its RCT deduction rate was determined by the Respondent to be 20%. The Respondent stated that it had carried out a full review of the Appellant's case, as requested. However, as the Appellant did not have the required qualifying compliance history for the previous three years, it did not meet the conditions to qualify for the zero rate of RCT and the Respondent was unable to apply zero rate at this time.
 - 15.4. On 21 August 2024, the Appellant duly appealed to the Commission.

Analysis

16. 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".
17. 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..."
18. The Appellant's appeal relates to the Respondent's decision dated 14 August 2024, to refuse the Appellant's application for classification as a zero rate contractor for the

purposes of RCT. The Appellant submitted that it was making the application on the basis that the Appellant *is a company and the rate of tax is 12.5% of profits - however the RCT deduction is 20% of turnover, this is a burden on cashflow.*” [sic]

19. The Respondent submitted that it had carried out a full review of the Appellant’s case, as requested. However, as the Appellant did not have the required qualifying compliance history for the previous three years, it did not meet the conditions to qualify for the zero rate of RCT. Thus, the Respondent was unable to apply the zero rate at this time.
20. 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.
21. The rate of RCT lower than 20% is a zero rate of RCT, which applies when the Respondent determines that section 530G TCA 1997 applies. For section 530G TCA 1997 to apply, a number of conditions must be met. In this appeal, the relevant condition is section 530G(1)(d) TCA 1997.
22. Section 530G(1)(d) requires that a subcontractor must have, throughout the previous three years, complied with all of its 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 delivery of returns, and the supply, on request, of accounts or other information to a Revenue officer. It is accepted in this appeal that the Appellant does not meet the three year requirement, as set out in section 530G TCA 1997, to be afforded the zero rate of RCT.
23. The Commissioner notes that section 530G(3) TCA 1997 provides that section 530G 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 satisfied the requirements of section 530G(1) or (2) TCA 1997.
24. 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 in its decision in relation to the rate of RCT.

Determination

25. 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's decision, to refuse the zero rate of RCT, was incorrect.
26. It is understandable that the Appellant will be disappointed with the outcome of its appeal. The Commissioner acknowledges the business circumstances which the Appellant outlined in this appeal. However, the Commissioner must apply the provisions of the legislation.
27. 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

28. 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

29. 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
4 December 2024