AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

44TACD2025

Between

[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 Income Tax ("IT"), Social Insurance Contributions ("PRSI") and Universal Social Charge ("USC") Notices of Assessment of Amounts Due (collectively "the PREM assessments") dated 30 January 2024 and a Notice of Assessment of Tax Payable Value Added Tax ("VAT") dated 7 February 2024 ("the VAT assessment"), raised by the Revenue Commissioners ("the Respondent") for the years 2019 and 2020 ("the relevant periods"), in the total revised amounts of €18,285.93.

2. On 9 February 2024 and 7 March 2024, the Appellant duly appealed to the Commission by submitting its Notices of Appeal in relation to the PREM assessments and the VAT assessment for the relevant periods ("the appeal"). On 1 July 2024 and 10 July 2024, the Appellant filed its Statements of Case and on 5 April 2024 and 19 April 2024, the Respondent filed its Statements of Case in relation to the appeals. On 19 August 2024, the Appellant filed its consolidated Outline of Arguments in relation to its appeals and on 19 August 2924, the Respondent also filed its Outline of Arguments in relation to the appeals. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

3. The liabilities arose herein, in circumstances where the Respondent disallowed certain travel and subsistence expenses claimed by the Appellant, as it was of the opinion that the expenditure of the Directors was for travelling to and from work, in contrast to it being incurred for the purposes of work. Subsequent to the assessments being raised the parties entered into correspondence in relation to the liabilities of the Appellant. In correspondence dated 11 September 2024, the Respondent set out the revised amounts of liabilities as follows: 2019 PREM - €6,776.57; 2020 PREM - €5,825.79; and 2020 VAT - €5,683.57.

4. The appeal hearing took place remotely on 16 September 2024. The Appellant was represented by its tax agent and Respondent was represented by junior counsel. The Director of the Appellant ("the Director of the Appellant") was called as a witness to give evidence on behalf of the Appellant and an employee of the Respondent was called to give evidence on behalf of the Respondent.

5. At the hearing of the appeal, the Appellant confirmed that in relation to the VAT assessment, the amount at issue was now in the amount of €613.00 only, as the Appellant

accepted that the balance of the revised amount of €5,683 was payable to the Respondent in respect of VAT.[1]

Background

6. The Appellant is a limited liability company and was established in 2016. There were two Directors of the Appellant, with one of the Directors ("the second Director") resigning at the end of 2019. The Director of the Appellant and his spouse are currently the Appellant's Directors. During the relevant periods, the Appellant had 5 employees, who were [redacted]

7. The business of the Appellant is [redacted]. The registered business address of the Appellant is [redacted], which is also the home address of the Director of the Appellant ("the Appellant's business address"). The Director of the Appellant submitted that he uses a room in his house as a home office.[2] The Appellant worked at three sites.

8. The Appellant claimed that the Directors were paid travel and subsistence. The subsistence records provided by the Director of the Appellant showed that trips were made mainly between the Appellant's business address and [redacted] ("the site"), where the company maintains a site. The basis of the Appellant's appeal is that the travel and subsistence expenses are allowable. The Respondent has disallowed the claimed expenditure as it contended that the Directors were travelling to and from work, as opposed to the expenses being incurred for the purposes of work.

9. On 2 May 2019, the Respondent issued to the Appellant an Aspect Query notification and on 20 October 2022, an Audit notification letter issued from the Respondent to the Appellant. The Respondent submitted that the subsistence records provided by the Director of the Appellant showed that he spent most days from 7:00am to 17:30pm at the site. Thus, it was the Respondent's view, supported by the documentation, that the Appellant's Directors' normal place of work was the site. The Respondent submitted that the travel and subsistence expenses, the food and entertainment expenses and certain unvouched purchases claimed by the Appellant were disallowed, as they were not considered to be incurred wholly and exclusively for the purposes of the trade. Consequently, the Respondent disallowed the Appellant's claims for expenses.

[1] Transcript Day 1, page 13
[2] Transcript Day 1, page 26

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:-

11. Section 112 of the Taxes Consolidation Act 1997, Basis of assessment, persons chargeable and extent of charge, *inter alia* provides that:-

(1) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

(2) (a) In this section, "emoluments" means anything assessable to income tax under Schedule E.

12. Section 114 of the Taxes Consolidation Act 1997, General rule as to deductions, provides that:-

Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

13. Section 117 of the Taxes Consolidation Act 1997, Expenses allowances, provides that:-

(1) Subject to this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of section 112 as a perquisite of the office or employment of that director or employee and included in the emoluments of that office or employment assessable to income tax accordingly; but nothing in this subsection shall prevent a claim for a deduction being made under section 114 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment.

(2) The reference in subsection (1) to any sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him or her.

14. Section 118 of the Taxes Consolidation Act 1997, Benefits in kind: general charging provision, *inter alia* provides that:-

(1) Subject to this Chapter, where-

(a) a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of-

(i) living or other accommodation,
(ii) entertainment,
(iii) domestic or other services, or
(iv) (other benefits or facilities of whatever nature, and

(b) apart from this section the expense would not be chargeable to income tax as income of the director or employee

then, sections 112, 114 and 897 shall apply in relation to so much of the expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount of the expense had been refunded to the director or employee by the body corporate by means of a payment in respect of expenses, and income tax shall be chargeable accordingly.

15. Section 886 of the Taxes Consolidation Act 1997, Obligation to keep certain records, *inter alia* provides that:-

(2) (a) Every person who –

(i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,

(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

16. Section 84 of the Value Added Tax Consolidation Act 2020 ("VATCA 2010"), Duty to keep records, *inter alia* provides that:

(1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.

(2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.

Evidence and Submissions

Appellant's evidence

17. [redacted] Director of the Appellant gave evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by the Director of the Appellant:

17.1. The witness testified that the Appellant is mainly an engineering business. The witness stated that the day to day business is [redacted] The witness stated that the Appellant's business address is also his home address where he uses a room as a home office. The witness confirmed that there are currently two Directors of the Appellant, himself and his spouse, but for part of the relevant periods it was himself and the second Director. The witness testified that the Appellant's core business is installation of p[redacted]

17.2. The witness gave evidence that he started his day in the office at around 6.30am to 7.00am, which would include making a plan for the day, seeing who is going where, what materials were needed and who he had to call to in relation to new business. The witness stated that during the relevant periods he had about five employees who were all [redacted] and who would have been based on various sites. The witness testified that 75% of his work was with the site, but the Appellant worked at three sites. The witness testified that during the relevant periods he was setting up another business to run in parallel with the Appellant.

17.3. The witness gave evidence that he attended the different sites to take materials there or to show the employees what work was required for the day or to carry out cold calls to potential customers. The witness stated that he might go to two or three sites in one day and then come back in the evening and document his day. The witness gave evidence that most of his time was spent at the site or one of the other two sites. The witness stated that the employees could not carry the equipment required for the job, as they had no insurance on their vehicles to do so. Therefore, he had to take the equipment to the site. In addition, the equipment could not be left on site as most power tools and hand tools would have disappeared and there was no lock up provided for the equipment.

17.4. The witness testified that during the relevant periods, there were two Directors in operation and they were out on the road looking for work and trying to build up the business to keep it going. The witness gave evidence that they both worked out of different areas, miles apart and they both had their own expenses.

17.5. In relation to the site, the witness gave evidence that he was initially a contractor at the site. However, he and the second Director were asked if they would work for the site and they agreed. The role was to continue the work that they were doing. The witness testified that 75% of the business was with the site, with a large number of the Appellant's employees being on that site.

17.6. The witness gave evidence that he had a shed in his home, which he used as a workshop. The witness stated that he would take [redacted] from the site and repair them in the workshop before bringing the items back to the site to reinstall them. The witness stated that the workshop was small, but adequate. It was put to the witness in cross examination that an employee of the Respondent attended there in 2024, and there was no evidence of work taking place and that there was no power to the workshop. The witness stated that during the relevant periods he did use the shed as a workshop and ran an extension lead out to the

shed as a power source, due to the lack of sockets. The witness stated that it was a basic shed, but it was used as a workshop and that he was not going to spend money on rewiring when he knew he could not work there continuously. The witness said that he does not work in his shed anymore.

17.7. It was put to the witness by counsel for the Respondent that he was at the site all day and the site was the Appellant's base. The witness stated that was where he did most of his work, but his base was the Appellant's business address. It was put to the witness by counsel for the Respondent that once the [redacted] were installed, the Appellant was maintaining [redacted] and that was where the work was carried out. The witness restated that the site was not his base.

17.8. It was also put to the witness that there can only be one place of business or office for the Appellant and if the witness was contending that his home was his base, the second Director was travelling from a different location then and not the base. The witness stated that the second Director was travelling also to the site and any other site that he was required to visit, but that he was also promoting the business at that time.

17.9. It was put to the witness that the Appellant's Directors were claiming for travel to and from work as opposed to the travel in the performance of the duties of work, that the records provided indicate that a large proportion of the witness's time was spent from 7:00am to 5:30pm at the site and not travelling to other sites. The witness stated that he appreciated that, but that he might be at the site for some of the day, but that did not mean that he would not have travelled to the two other sites. It was put to him by counsel for the Respondent that he should have included that in his records, if that was so.

Appellant's submissions

18. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, both at the hearing of the appeal and the documents submitted in support of this appeal:

18.1. The subsistence claims amounted to €15,000 (two Directors) for 2019 and to €8,300 for 2020 (one Director). It is not correct that the Respondent is treating the Directors as site-based employees. There would be no business if all the employees were site based. The Directors put in long hours in the management of the business from its office and workshop at the Appellant's business address. This included early mornings and late evenings, pricing, quoting, discussing and engaging with customers on various projects, managing staff, payroll, ensuring

that employees are paid promptly, customers are invoiced and money collected, and suppliers managed and paid. This business cannot be managed from the site;

18.2. The mileage allowance was claimed by the Directors for the use of their own vehicles for business meetings. The claims amounted to €7,000 (two Directors) for 2019 and to €2,700 for 2020 (one Director). This was a standard business allowance for business travel incurred by employees of any business;

18.3. In relation to the case law that is being relied on by the Respondent, the majority of the cases relate to either civil servants who are operating on their own or single employees. The Appellant's case is totally different to any of them, in the sense that there were a number of employees that were dependent on the Directors fulfilling the role of making sure the assets were safeguarded, were on site, wherever that site may be, so that they can carry out their work;

18.4. The Appellant rented a workshop in November 2019 to May 2020 and a number of employees would have been there;

18.5. The subsistence claims for each day showed that the Director of the Appellant was away from base for that time and gave the first and last port of call. The Appellant did not give all the work that was done in between. It was only possible to claim subsistence for one site for six months but on a number of occasions the Directors had changed sites. If the Appellant is not successful on its first argument then it has a second argument, that every time there was a change of site there was an entitlement to claim expenses. Reference was made to the Respondent's Tax and Duty Manual Part 05-01-06 entitled "Tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees" and to paragraph 4.7.4 and the eating on site allowance which when calculated amounted to in or around €7,500. That has not been claimed, but it was an entitlement;

18.6. The manner in which the subsistence was claimed was that it had not been paid out to the Directors, but it had been done by a journal entry which puts a charge to the accounts. It was the money that was owed to them long-term. If the Appellant is not successful, then having regard to the way it was charged, it should go back the same way. It should not give rise to an income tax liability, because the Appellant had not drawn the money.

Respondent's evidence

19. [redacted] ("the Respondent's witness"), gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given by the Respondent's witness:

    19.1. The witness confirmed that he was employed by the Respondent in the position of Executive Officer. The witness testified that he attended the business address of the Appellant, by agreement on 14 May 2024. The witness stated that he and his manager were initially shown into a room with a large dining table with chairs around it and he observed a tablet or an iPad on the table and some invoice books. The witness stated that he also saw a printer.

    19.2. The witness stated that they were then shown to the back of the premises where there were three stables. The witness testified that he was told that they were used to store equipment and to the right of them, there was located a large shed. The witness gave evidence that they were shown inside the shed and he observed that there were no power sockets in the shed, there was no evidence of a workbench and no evidence of shelving for storing parts or anything like that. The witness stated then when he asked about power to the shed the Director of the Appellant explained that it was power supplied by an extension lead from one of the stables or the former stables.

    19.3. The witness testified that his first impression was that the shed had not been used for a while, but that if it was used for heavy work, it did not seem fit for purpose.

    19.4. It was put to the witness by the Appellant's agent that the inspection took place in 2024, but the relevant periods were 2019/2020, so there had been some lapse of time. The witness stated that he would have expected to see some evidence of work that had been carried out there and that the one thing that did strike him was the lack of electricity outputs. The witness stated that he could accept that all the equipment was now moved to the site.

Respondent's submissions

20. The Commissioner sets out a summary hereunder of the submissions made by the Respondent, both at the hearing of the appeal and in the documents submitted in support of this appeal:

20.1. The burden of proof to show that an appellant is entitled to the relief claimed falls on the taxpayer. Reference was made to the decision in *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49;

20.2. The Appellant is seeking to obtain a relief from the imposition of tax and so the Appellant must demonstrate that it meets all the requirements to be so relieved of that imposition. Reference was made to the decision in *Revenue Commissioners v Doorley* [1933] I.R. 750;

20.3. The expenses claimed related to the Directors' travel to work as opposed to in the performance of the duties of work. The evidence was that the Director of the Appellant spent all of his time at the site or at least the majority of his time there. The Director of the Appellant has been allowed travel and subsistence claims in relation to the two other sites, but not in relation to the site, as that was where he was based and it appeared on his own records to be the base he was working out of;

20.4. Reference was made to a previous decision of the Commission in *37TACD2023* where deductions were disallowed on the basis that they were not in the performance of the duties of the trade;

20.5. In relation to the Appellant's office being at the Appellant's business address and the home of the Director of the Appellant, while it may have been his office, the majority of his work was carried out/performed, on his own records and evidence, at the site. While the Director of the Appellant gave evidence that he would go to other sites on some days, that was not reflected in his documentation nor was it supported by any other documents.

20.6. If there was a dual purpose to the trips, that would disallow an expense claimed as the expense must be incurred wholly and exclusively for the purposes of the trade. Reference was made to the decision in *Mallalieu v Drummond* [1983] 57 STC 665, which concerned a barrister's claim for the cost of clothing that was required when making court appearances. The barrister claimed that the expense was only in relation to the Bar Council's dress code and contended that these clothes would not normally be purchased. The expense was not allowed due to the dual purpose of the expenditure. The clothing enabled the barrister to be warm and properly clad as well as allowing her to work in her profession.

20.7. Reference was made to the decision in *Miners v Atkinson (Inspector of Taxes)* [1997] STC 58 which concerned a computer consultant who provided his services

through a company and was denied a deduction for the cost of travel from his home to the sites at which he worked. The court found that the duties carried out at home were not the substantive duties of the employment, and there was not requirement for them to be carried out at home as they could be carried out at another place. Mr Miner carried out the substantive duties of the employment at clients' premises.

20.8. Reference was made to the Respondent's Tax and Duty Manual Part 05-01-06 entitled "Tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees" and in particular paragraph 4.7.1 which relates to site based employees. A site-based employee is described as one "*who does not have a fixed base and who, in the course of his/her employment, performs substantial duties on behalf of his/her employer at different locations...*". The Respondent contends that the Directors did have a fixed base, namely at the site, so this did not apply.

20.9. Furthermore, paragraph 4.7.2 of the manual, did not apply as the Directors were at a fixed base, but also as the site was not more than 32km (20 miles) from the employer's base. In relation to the eating on site allowance at paragraph 4.7.4, there was no evidence adduced that this was paid, but also it applied to site based employees, which the Directors were not as they had a fixed base at the site.

20.10. This was a benefit to the Directors and their loan account which falls within section 117 TCA 1997 and which was paid to an employee.

Material Facts

21. Having read the documentation submitted and having listened to the oral legal submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

21.1. The Appellant is a limited liability company and was established in 2016.

21.2. During the relevant periods, the Appellant had two Directors, the Director of the Appellant and the second Director who resigned at the end of 2019. The second Director was replaced by the spouse of the Director of the Appellant.

21.3. During the relevant periods, the Appellant had 5 employees, who were [redacted]

21.4. The business of the Appellant is f[redacted]

21.5. The business address of the Appellant is [redacted], which is also the home address of the Director of the Appellant.

21.6. The Director of the Appellant uses a room at the Appellant's business address as a home office.[3]

21.7. The Director of the Appellant used a shed at the Appellant's business address to carry out some repairs and work. In order to acquire power in the shed, the Director of the Appellant used an extension lead.

21.8. During the relevant periods, the Appellant carried out work at three different sites.

21.9. The majority of the Appellant's work was carried out at the site.

21.10. On 2 May 2019, the Respondent issued to the Appellant an Aspect Query notification.

21.11. On 20 October 2022, an Audit notification letter issued from the Respondent to the Appellant.

21.12. There were no records or evidence adduced in this appeal to support the expense claims made by the Appellant in relation to the second Director.

21.13. There was no documentary evidence submitted in this appeal to support the Appellant's contentions that part of its business was setting up a new company and establishing new business customers on an ongoing basis.

21.14. There was no documentary evidence submitted or records produced in this appeal to support the Appellant's claim that the Directors travelled to areas other than what was set out in the records i.e. from the Appellant's business address to the site.

Analysis

The burden of proof

22. 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 ("Menolly Homes")* [2010] IEHC 49, wherein at paragraph 22, Charleton J. states that:

[3] Transcript Day 1, page 26

"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".

23. The Commissioner also considers it useful herein, to set out paragraph 12 of the judgment of Charlton 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…"

24. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments, for example in *McNamara v Revenue Commissioners* [2023] IEHC 15 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

25. However, when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"). At paragraphs 97-98 the Court of Appeal held that:

"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake……..

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation……."

Statutory interpretation

26. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the judgment of Kennedy CJ. in *Revenue Commissioners v Doorley* [1933] I.R. 750 at page 765 wherein he held that:

"*The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in*

question is thereby imposed expressly and in clear and unambiguous terms...for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament…."

27. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

"*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.""*

28. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

29. Furthermore, the Commissioner is mindful of the recent decision in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 ("Heather Hill") and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of

the legislative scheme. The Commissioner is mindful of the *dictum* of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he stated that:

> *"It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed".*

30. To a certain degree it might be said that these cases suggest that the "literal" and "purposive" approaches to statutory interpretation are no longer hermetically sealed. To the extent that the line between what is now permissible has become blurred, Murray J. in *Heather Hill* sets out "*four basic propositions that must be borne in mind"* from paragraphs 113 to 116 as follows:-

> "*113. First, 'legislative intent' as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in Crilly v. Farrington [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably attributed to a collective assembly whose members may act with differing intentions and objects*.
>
> *114. Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see DPP v. Flanagan [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in McGrath v. McDermott [1988] IR 258, at p. 276)*.

115. Third, and to that end, the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

116. Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However - and in resolving this appeal this is the key and critical point - the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

31. The *dictum* of Murray J. in *Heather Hill* was considered and approved by the Court of Appeal in the decision in *Hanrahan*. The Court of Appeal noted that the trial judge had cited and relied on the approach to the interpretation of taxation legislation that Murray J. in the Court of Appeal identified in the decision of *Used Car Importers Ireland Ltd. v Minister for Finance* [2020] IECA 298. Murray J., when considering the provision at issue, at paragraph 162 of the judgment stated that:

"[it] falls to be construed in accordance with well-established principle. The Court is concerned to ascertain the intention of the legislature having regard to the language used in the Act but bearing in mind the overall purpose and context of the statute."

32. Moreover, the Court of Appeal in *Hanrahan* at paragraph 83 held that:

"*Thus, the High Court correctly held that in interpreting taxation statutes generally, context and purpose are relevant. Therefore, not only does s. 811 direct Revenue and the court to have regard to the purpose of the provisions at issue but even in a more general manner the context and purpose of the statute is relevant.*"

33. Of note, the Court of Appeal in *Hanrahan* at paragraph 79, when referring to the *dictum* of Murray J. in *Heather Hill,* in relation to the analysis of context and purpose, stated that:

> "*Murray J. was very alive to the dangers of pushing the analysis of the context of the provision too far from the moorings of the language of the legislative section; the line between the permissible admission of "context" and identification of "purpose" may become blurred if too broad an approach to the interpretation of legislation is taken…..….He said that "the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown…"*

34. Where there is an ambiguity in a tax statute it must be interpreted in the taxpayer's favour. In *Bookfinders*, O'Donnell J. explained that this rule against doubtful penalisation, also described as the rule of strict construction, means that if, after the application of general principles of statutory interpretation, there is a genuine doubt as to whether a particular provision creating a tax liability applies, then the taxpayer should be given the benefit of any doubt or ambiguity as the words should be construed strictly "*so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language*".

35. If there is any doubt, then a consideration of the purpose and intention of the legislature should be adopted. Then, even with this approach, the statutory provision must be seen in context and the context is critical, both immediate and proximate, but in some circumstances perhaps even further than that.

36. There is abundant authority for the presumption that words are not used in a statute without meaning and are not superfluous, and so effect must be given, if possible, to all the words used, for the legislature must be deemed not to waste its words or say anything in vain. In particular, the Commissioner is mindful of the *dictum* of McKechnie J. in *Dunnes Stores* at paragraph 66, wherein he stated that:

> "*each word or phrase has and should be given a meaning, as it is presumed that the Oireachtas did not intend to use surplusage or to have words or phrases without meaning.*"

37. The purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the Court or Tribunal is to seek to ascertain the meaning of the words. The general

principles of statutory interpretation are tools used for clear understanding of a statutory provision. It is only if, after that process has been concluded, a Court or Tribunal is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.

38. The Commissioner will now proceed to consider the statutory provisions articulated in this appeal.

Substantive issue

39. The central issue to be determined in this appeal is whether or not the Appellant ought to have remitted PAYE, PRSI and USC on payments made to the Appellant's Directors, in respect of certain expenses claimed for the relevant periods, namely 2019 and 2020. In this regard, the Commissioner will consider sections 112, 114 and 117 TCA 1997. Furthermore, the Respondent asserts that the Appellant failed to maintain records in accordance with its statutory obligations and the Commissioner considers that section 886 TCA 1997 is relevant in that regard.

40. In these appeals, it is for the Appellant to show that the payments it made to the Appellant's Directors came within the scope of section 114 TCA 1997, so that it did not have to deduct PREM from the payments it made. The Appellant must establish that the expenses incurred were "*expenses of travelling in the performance of the duties of that office*".

Sections 112, 114 and 117 TCA 1997

41. The relevant potential charge to PAYE, PRSI and USC for the travel and subsistence expenses in this appeal, arises pursuant to sections 112, 114 and 117 TCA 1997. It is for the Appellant to show that the payments it made to the Appellant's Directors come within the scope of section 114 TCA 1997, so that it did not have to deduct PAYE, PRSI or USC from the payments it made. The Appellant must establish that the expenses incurred were "expenses of travelling in the performance of the duties of that office".

42. The deeming provisions contained in section 117 TCA 1997 treat the payment of expenses by a body corporate to any of its directors or employees as a perquisite for the purposes of section 112 TCA 1997, notwithstanding that no personal benefit may have been derived.

43. The general rule as provided for in section 114 TCA 1997 is longstanding, being in all material respects identical to that prescribed in the Income Tax Act 1918 and, before that, the Income Tax Act 1853. In *Ricketts v Colquhoun (H.M. Inspector of Taxes)* [1926] AC 1 Viscount Cave L.C., at page 4, made the following observations in respect of travel expenses:-

"….they must be expenses which the holder of an office is necessarily obliged to incur - that is to say, obliged by the very fact that he holds the office and has to perform its duties - and they must be incurred in - that is, in the course of - the performance of those duties.

The expenses in question in this case do not appear to me to satisfy either test. They are incurred not because the appellant holds the office of Recorder of Portsmouth, but because, living and practising away from Portsmouth, he must travel to that place before he can begin to perform his duties as Recorder and, having concluded those duties, desires to return home. They are incurred, not in the course of performing his duties, but partly before he enters upon them, and partly after he has fulfilled them".

44. Further, Viscount Cave, L.C. in disallowing subsistence payments, observed at page 134 as follows:-

"*A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work, so that he must find board and lodging away from home, that is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance."*

45. In the case of *SP Ó Broin v Mac Giolla Meidhre* [1959] IR 98, Teevan J. quoted the following words of Lord Blanesburgh in relation to the operation of the general rule in *Ricketts v Colquhoun* as follows:-

"It says "if the holder of an office' – the words be it observed are not 'if any holder of an office' – 'is obliged to incur expenses in the performance of the duties of the office' – the duties again are not the duties of his office. In other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective. The deductible expenses do not extend to those which the holder has to incur mainly, and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition"."

46. As is clear from the passage in *Ricketts v Colquhoun* quoted above, it is a strict requirement for the allowance of a deduction under section 114 of the TCA 1997, that there be an objective obligation arising from a duty that necessitates a taxpayer to incur an expense. This rules out expenses that arise from decisions that are *"personal*" to a taxpayer. It was noted by Vinelott J. in *Elderkin v Hindmarsh* [1988] STC 267 at page 270, the UK equivalent of section 114 of the TCA, is so stringent "*that in many, if not in most, cases the subsection gives the taxpayer little or no relief*".

47. This interpretation is endorsed in subsequent jurisprudence opened by the Respondent. In *Miners v Atkinson (Inspector of Taxes)* [1997] STC 58 a company director, who was a computer consultant, claimed a deduction for travel expenses from his home which was also the company's registered office, to a client's premises. The claim was disallowed on the grounds that the expenses arose from his personal choice regarding his place of residence. The Court quoted and approved the decision in *Taylor v Provan* [1975] AC 194, at page 227, which held unambiguously "*Expenses incurred in travelling to work are not deductible*."

48. Moreover, in the case of *Mallalieu v Drummond (Inspector of Taxes)* [1983] STC 665, the taxpayer, a barrister, purchased dark clothes to comply with Bar Council rules for court appearances. This expense was found to have a dual purpose of preserving warmth and decency as well as satisfying the Bar Council rules and so the cost was not tax deductible. The Appellant must show that the expenses in question were incurred by the Directors of the Appellant of necessity in the performance of his duties and that they were incurred wholly and exclusively in the performance of his duties (in their entirety and excluding any ancillary or personal purpose). The Respondent submitted that this was relevant in the context of the evidence of the Director of the Appellant that he had to travel to the site in order to drop the work tools and machinery to the employees, as the tools and machinery could not be stored on site due to lack of storage facilities being provided to the Appellant. The Commissioner notes that the Appellant stated in correspondence that "*[t]he diesel expenses incurred are legitimate business expenses of the company, incurred in the normal operation of the business. Each Director had a company van, which was used to transport plant and equipment to site, part operate as a workstation, used to collect and ferry materials to site and used to call to various potential customers to ensure there was a flow of work for all the company employees."*

49. In order to succeed, therefore, the Appellant must show that the expenses in question, incurred by the Appellant's Directors, were incurred in the performance of their duties, that they were incurred of necessity in the performance of their duties and that they were incurred wholly and exclusively in the performance of their duties (in their entirety, and excluding any ancillary or personal purpose).

50. The Respondent argued that the expenses claimed by the Appellant did not meet the test under section 114 TCA 1997, which would make the receipt of the sums tax free, on the basis that they represented a reimbursement of sums that were incurred "*wholly, exclusively and necessarily in the performance of those duties".* It was submitted that these expenses solely related to travelling to work, which was not allowed.

51. The Commissioner has considered the evidence of the Appellant's witness that he had a home office which was set up on the dining table in a room in his house. In addition, the Commissioner notes that the Appellant's registered business address is also the home of the Director of the Appellant. However, the fact that the registered business address is the home of the Director of the Appellant does not mean that it constituted the Appellant's place of work or "base" for the purposes of claiming expenses. The Commissioner notes the evidence of the Director of the Appellant that he spent some time in his home office prior to travelling to the site. The evidence of the Director of the Appellant was that he started his day between 6.30am to 7.00am in his office where he mapped out the plan for the day, such as "*what employees are going where, what material is needed and who I have to meet and probably finish off jobs I haven't finished off*". In addition, the Director of the Appellant confirmed that he was site based in terms of his job and not office based. The Commissioner notes the business of the Appellant is [redacted] Furthermore, the Appellant submitted that part of its business was promoting itself and establishing new business contacts. However the Commissioner was not furnished with any documentary evidence in support of this contention, such as correspondence with new or potential customers, that part of the Appellant's business was such.

52. The Commissioner notes the evidence that the majority of the Appellant's work for the relevant periods was carried out at the site. The evidence of the Director of the Appellant was that it was in or around 75% of the work of the Appellant. The Commissioner considers that the documentary evidence submitted by the Appellant supports this contention, in particular the "red book" which appeared to be a ledger of travel to various sites. For the relevant periods, it is apparent from the ledger that the Appellant's work was primarily located at the site. Nevertheless, the Director of the Appellant stated that he would not consider the site his base.

53. The Commissioner notes that the evidence of the Director of the Appellant was that prior to the resignation in late 2019, of the second Director, he was at another location and he would travel to the site also. The Commissioner is satisfied that it appeared that both Directors were working on site at the same location for the majority or 75% of the time. The Respondent submitted that it was on this basis that it considered the site as the Appellant's normal place of work. Moreover, the evidence of the Director of the Appellant was that in 2019, the second Director had a van and would travel to the site and any other site that had to be attended. Thus, the Commissioner is satisfied that the second Director was travelling from another location to the site and not to the "base" that the Director of the Appellant contends was the Appellant's "base", which entitled the Directors to the

expenses claimed i.e. the home office of the Director of the Appellant and the Appellant's registered business address. The Director of the Appellant confirmed that the second Director "*had no workshop or anything*". The Commissioner is satisfied that if the Appellant is contending that the Appellant's "base" is the home address of the Director of the Appellant, it is clear that the second Director was not travelling from the "base".

54. In relation to the registered business address, it was contended that the Appellant had a workshop there in addition to a home office which supported it being the Appellant's base. The Commissioner notes the evidence of the Director of the Appellant that it was "*a workshop and an office. It was just a basic shed really*." Furthermore, the evidence was that the Director of the Appellant would take [redacted] back to the workshop to repair in the workshop and then bring them back to the site to reinstall them again. Also, the Director of the Appellant stated that whilst there were no power sockets in the workshop he would run an extension lead out to the shed, as tools were being charged in the workshop every day. He stated that it was a short term fix and he did not want to spend money rewiring the workshop. The Commissioner notes the evidence of the Respondent's witness that he called to the registered business address in 2024, by invitation and inspected the workshop. His evidence was that he saw no sign of work being carried out there and thought the absence of power was notable. The Commissioner considers that the attendance at the workshop in 2024 and the evidence in relation to it, was of little evidential value herein, in circumstances where this appeal relates to the years 2019 and 2020 and it is for those years that the Commissioner must consider where the Appellant's normal place of work was. The Commissioner has also considered the receipt enclosed in the Appellant's documentation from [redacted] which purports to confirm that the Appellant rented a shed/workshop from it from 4 November 2019 to 29 May 2020.

55. The Appellant further submitted that whilst the Directors claimed travel and subsistence expenses from the home address of the Director of the Appellant, it was the case that they moved around during the day to other sites or potential customers. The Commissioner has been presented with no evidence to support such a contention nor have any records been created as to the trips taken, reasons for the trips and amounts claimed. The Director of the Appellant gave evidence that he accepted that there were no records in relation to such trips.

56. The Commissioner is satisfied that the law is clear that there is a difference between travelling to perform your duties i.e. travelling to put yourself in a position to perform your duties and travelling in the performance of your duties. Having regard to the evidence adduced in this appeal, including both the oral evidence and documentary evidence, the

Commissioner is satisfied that the Director of the Appellant and the second Director did not travel to work in the performance of their duties, but were travelling to the site, in order to perform their duties. Moreover, the Commissioner finds that it was the site and not the Appellant's registered address that was the Appellant's base. The Respondent submitted that the travel expenses incurred by the Appellant's Directors for travel to the site, were ordinary commuting expenses and were not deductible under section 114 TCA 1997. The Commissioner agrees with this statement. The evidence adduced by the Appellant to support the argument that the Appellant's business address was the Appellant's base was not compelling. Whilst it may have been the case that the Director of the Appellant carried out administrative tasks in relation to the Appellant at his home office and some repairs at his workshop, the evidence was that he worked on the site and the documentary evidence supports that he travelled to the site the majority of time or 75% of the time, as per the evidence of the Director of the Appellant. Moreover, it appears that the second Director did not travel from the Appellant's business address or alleged base, but from another address. Whilst the Director of the Appellant may not have considered the site his "base", it was the case that this was the location where he carried out the duties of his role the majority of the time and the evidence submitted supports this fact. The Appellant submitted that each Director had a company van which was used to transport the equipment to the site "*as it was required to be safeguarded, stored, maintained and recharged where relevant and brought back to site (if applicable) the following morning*". Nevertheless, this does not establish that the Appellant's business address was the normal place of work of the Directors. The evidence does not support this, but supports that the site was the normal place of work. The Appellant submitted that the Directors' normal place of work was the Appellant's business address and without working in that location, there would be no turnover for the company and no work for the other employees. The evidence does not support this contention.

57. The Commissioner is mindful of the decision in *Miners v Atkinson (Inspector of Taxes)* [1997] STC 58 which concerned a computer consultant who provided his services through a company and was denied a deduction for the cost of travel from his home to the sites at which he worked. The court found that the duties carried out at home were not the substantive duties of the employment, and there was not requirement for them to be carried out at home as they could be carried out at another place. Mr Miner carried out the substantive duties of the employment at clients' premises. The Commissioner is satisfied that any work carried out by the Director of the Appellant in his home, the Appellant's business address, was not the substantive duties of his employment, which were carried

out at the site. Moreover, the Commissioner has no evidence of the duties that were carried out by the second Director or where they were alleged to have occurred.

58. The Commissioner notes that the Appellant engaged in prolonged correspondence with the Respondent in terms of evidencing and explaining the expenses it claimed. This the Commissioner notes, resulted in the reduction of the amounts disallowed as expenses by the Respondent, as per the correspondence dated 11 September 2024, and the amounts set out in the Introduction section of this Determination. However, the Commissioner is not satisfied that the Appellant has shown on balance that the Director of the Appellant was entitled to any further expenses claimed for the reasons set out in the foregoing paragraphs. In addition, there was no vouching documentation in relation to the second Director.

59. Thus, the Commissioner finds that the expenses claimed by the Directors of the Appellant were expenses relating to their normal commute or travel to work to perform their work and not travel in the performance of their work. The normal place of work is the place where the individual normally performs the duties of his or her office or employment.

Alternative argument – site based employees allowances

60. The Appellant submitted that it does not accept that the Directors are site based employees, but if the Appellant is denied the expenses claimed in respect of the Appellant's on the basis that the site was their normal place of work, the Appellant submitted that they would be entitled to the site based employees' "eating on site" allowance of €5.00 per day. Moreover, the Appellant submitted that they would have been entitled to payment for up to 6 months when they moved sites and that they "*moved sites 5 times in 2018, the last being on 20th December 2018. They moved site in April 2019, September 2019 and November 2019. They moved site in January 2020, February 2020, March 2020 and April 2020. It also rented a separate workshop in* [redacted] *at this time. This would mean they were entitled to subsistence for all of 2019 and 10/12ths of 2020. All civil service employees are entitled to a mileage allowance for use of personal vehicle for business travel, and the Directors should be similarly entitled*."

61. The Respondent submitted that this amount had not been claimed nor was it applicable to the Appellant's circumstances. The Commissioner has considered the Respondent's Tax and Duty Manual Part 05-01-06, entitled "Tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees", in particular paragraph 4.7 headed "Site-Based Employees". At paragraph 4.7.1 it states that:

"4.7.1 General

A site-based employee may be described as one who does not have a fixed base and who, in the course of her/his employment, performs substantive duties on behalf of her/his employer at different locations (generally, for periods longer than one day) - e.g. employees in the building industry."

62. Moreover, and of note, the Commissioner has considered paragraph 4.7.2 wherein it states that:

4.7.2 Tax treatment of expenses paid (including 'country money') to site-based employees

Revenue accept that expenses of travel and subsistence not exceeding €181.68 per week (known as 'country money' in the construction industry) may, subject to the exclusions in Chapter 4.7.3, be paid tax-free to a site-based employee where such employee is employed and working at a site which is 32km (20 miles) or more from the employer's base."

63. As stated, the Commissioner is satisfied that it was not the business address of the Appellant that was the Appellant's "base" but rather the site, being the Directors' normal place of work. Thus, paragraph 4.7.1 and 4.7.2 are not applicable, because the Directors were not site based employees, they had a fixed base at the site. The fact of the Appellant having a fixed base was argued by the Appellant i.e. that the Appellant's fixed base was the Appellant's registered address. Furthermore, even if both paragraphs were applicable and the Directors were site based employees there was no evidence adduced herein that the requirement relating to the 32km or more in paragraph 4.7.2 was satisfied.

64. In relation to the eating on site allowance the Commissioner has considered paragraph 4.7.4 wherein it states that:

"*4.7.4 'Eating on site' allowance*

An "eating on site" allowance is paid to site-based employees in some sectors of the economy. The following conditions must be adhered to before such an allowance can be paid tax-free:

(i) facilities for making tea, coffee, etc., are not provided on the site by the employer;
(ii) the employee is not in receipt of any other form of tax-free subsistence payment;
(iii) the employee works on the site for at least 1.5 hours before and 1.5 hours after normal lunch break;

(iv) the allowance is no more than €5 per day"

65. The Commissioner is satisfied that this is a payment where a person does not have a fixed base, as per paragraph 4.7.1 of the Respondent's manual, as set out heretofore, which states that "*[a] site-based employee may be described as one who does not have a fixed base*." The Appellant argued in this appeal that the Appellant's base was fixed at the business address of the Appellant and the home of the Director of the Appellant. However, the Commissioner has found that in fact the Appellant's base was the site based on the records and documentary evidence adduced. The Directors of the Appellant cannot be described as not having a fixed base, having regard to the evidence adduced. This appeal was on the basis that the Appellant's fixed base was the home of the Director of the Appellant and the Respondent argued it was the site.

66. Nevertheless, the Commissioner notes the conditions to be met in order for the allowance to be paid tax free. There was no evidence adduced that this amount was paid or that any of the conditions as per paragraph 4.7.4 were met by the Directors of the Appellant at the site, even if they could be considered site based employees.

The Directors' Loan Accounts

67. The Appellant further argued that the travel and subsistence claims had not been paid out to the Directors, but instead, have been claimed through the Directors' loan accounts. It was submitted that if the expenses are disallowed, then they should be reversed through the Directors' accounts. The Respondent argued that this was a benefit to the Directors and the loan accounts, such that it falls within section 117 TCA 1997, which states that "…*any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of section 112 as a perquisite of the office or employment of that director or employee and included in the emoluments of that office or employment assessable to income tax accordingly…".* The Respondent submitted that their loan accounts would satisfy this requirement.

68. The Appellant presented no legislative basis why the Commissioner should not treat the disallowed expenses as giving rise to an income tax liability, because the Appellant had not drawn the money. The Commissioner notes that the Respondent relied on section 117 TCA 1997 in this regard. The Commissioner is satisfied that the expenses claimed in this appeal fall within section 117 TCA 1997. In addition, should the Appellant be challenging the basis upon which the assessments were raised by the Respondent, the Commissioner reminds the parties that she has no jurisdiction to consider such a submission, as the jurisdiction of an Appeal Commissioner is limited to focussing on "*the*

assessment and the charge", as stated by Murray J. at paragraph 64 of the Court of Appeal's judgment in *Lee v The Revenue Commissioners* [2021] IECA 114("the *Lee* decision").

Section 886 TCA 1997

69. Section 886 TCA 1997 obliges a taxpayer to keep records which would enable returns to be made for the purposes of income and corporation tax.

70. Records are defined in section 886(1) TCA 1997 as including accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process relating to, *inter alia*, all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place. Linking documents are defined as those which are drawn up in the making of accounts and showing details linking the records to the accounts must also be maintained. The records must be maintained for 6 years.

71. The Commissioner has considered the Respondent's Tax and Duty Manual for the tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees, Part 05-01-06. The Commissioner notes that at paragraph 1.3 under the heading "Records to be kept" it states that:

> "*Where expenses are reimbursed based on an acceptable flat rate allowance (see Chapter 2.5), the employer must retain a record of:*
>
> - *The name and address of the director or employee,*
> - *The date of the journey,*
> - *The reason for the journey,*
> - *The kilometres travelled,*
> - *The starting point, destination and finishing point of the journey, and*
> - *The basis for the reimbursement of travel and subsistence expenses [e.g. an overnight stay away from an individual's normal place of work]*.
>
> *When reimbursing expenses vouched by receipts, the employer must retain such receipts, together with details of the travel and subsistence expenses incurred.*
>
> *The period of retention of records is six years after the end of the tax year to which the records refer.*

Queries about the adequacy of records to be maintained may be referred to the Revenue office dealing with the employer via MyEnquiries."

72. The Commissioner accepts that certain expense sheets were kept, but considers that in addition, the Appellant should have retained records in relation to the second Director. Moreover, the Director of the Appellant gave evidence that he accepted that there were no records in relation to trips taken to establish new business. In accordance with section 886 TCA 1997, the Appellant was required to keep records of such trips if expenses were being claimed.

Jurisdiction of an Appeal Commissioner

73. The Appellant submitted that it spent nine months from January 2023 to September 2023 "*chasing [the Respondent] to see where [the Respondent] were on the audit, to be largely ignored or advised that there was no further update. [The Respondent] are now running the Tax Audit to your own timetable only and are being totally unreasonable. This approach is certainly not consistent with the treatment promised within The Charter of Rights for Taxpayers*".

74. It is important to note that the Commission does not have a supervisory jurisdiction over the conduct of the Respondent. In this regard, the Commissioner refers to the recent *dictum* of Mr Justice Quinn in the judgment in *Browne v the Revenue Commissioners* [2024] IEHC 258, wherein Quinn J., when referring to an Appeal Commissioner's jurisdiction and the well-established principles as set out in the *Lee* decision, at paragraph 20 stated that:

> "*In other words, this jurisprudence explains how the function of the Appeal Commissioners is essentially restricted to enquiring into and making findings as to issues of fact and law relevant to the statutory charge to tax and they do not have any quasi inherent powers to declare any aspect of the process or outcome of the Revenue Commissioners void or invalid, akin to the powers the High Court might have in a judicial review hearing*".

75. The Commission's jurisdiction is limited to focussing on "*the assessment and the charge*", as stated by Murray J. at paragraph 64 of the Court of Appeal's judgment in the *Lee* decision. The Commissioner does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes

within the jurisdiction and remit of the Courts. Still, the Commissioner appreciates the frustration felt by the Appellant in its dealings with the Respondent.

Conclusion

76. Thus, the onus of establishing that the disbursements were expended "*wholly, exclusively and necessarily in the performance of those duties*" rests on the Appellant. It is a long-established principle of tax case law that the expenses of travelling from home to work and vice versa are expenses of travelling which are not necessarily incurred by an office holder or employee in the performance of the duties of his or her office or employment. Having regard to the totality of the evidence adduced in this appeal, the Commissioner is satisfied that the expenses claimed were not deductible, as they were expenses incurred for travel to and from work. The Appellant's Directors did not travel to work in the performance of their duties, but were merely travelling to the site in order to perform the duties. The Commissioner does not accept that the Appellant's business address was the Appellant's base or normal place of work, but rather that the site was the Appellant's base or normal place of work. The Commissioner makes this finding based on the documentation submitted and the evidence adduced, which does not support the Appellant's contentions as to the expenses claimed. Moreover, there were no records submitted in relation to the second Director or travel to areas other than the Appellant's business address to the site(s) in contravention of section 886 TCA 1997. Hence, the Appellant's appeal fails.

77. Consequently, the Commissioner is satisfied that the Appellant has not succeed in proving on the balance of probabilities that the PREM assessments and VAT assessment raised by the Respondent are incorrect.

Determination

78. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in showing that the tax is not payable. Therefore, the Income Tax, Social Insurance Contributions and Universal Social Charge Notices of Assessment of Amounts Due (collectively "the PREM assessments") dated 30 January 2024 and a Notice of Assessment of Tax Payable Value Added Tax dated 7 February 2024 ("the VAT assessment"), raised by the Respondent for the years 2019 and 2020, in the total revised amounts of €18,285.93, shall stand.

79. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

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

Notification

81. 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

82. 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
17 January 2025