AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

59TACD2025

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 ("TCA 1997") brought on behalf of [redacted] ("the Appellants") in relation to Notices of Amended Assessment ("the assessments") to Income Tax dated 15 December 2023, 16 January 2024, 9 April 2024 and 23 November 2024, for the following years ("the relevant years"), in the following amounts:

[redacted]	Year	Amount	[redacted]	Year	Amount
	2020	€5,836			
	2021	€11,192		2021	€1,881
	2022	€10,777		2022	€12,957
	2023	€8,220			

2. The liabilities arose in circumstances where the Respondent amended the Appellants' income tax returns for the relevant years in accordance with section 997A TCA 1997.

3. The Appellants duly appealed the assessments to the Commission on various dates by submitting their respective Notices of Appeal and accompanying documentation in support of their appeals. In accordance with section 949E(2)(b) TCA 1997, the Commissioner consolidated the appeals in respect of the Appellants. Moreover, in accordance with section 949Q TCA 1997, the Appellants submitted a Statement of Case which built on the Appellants' Notices of Appeal. The Commissioner has also received a Statement of Case from the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.

4. On 16 January 2025, a hearing of the appeals took place remotely. The Appellants represented themselves at the hearing of the appeals and the Respondent was represented by two case officers.

Background

5. The Appellants were Directors of [redacted] ("the company"). Specifically, the Appellants were proprietary Directors of the company, such that they each owned or controlled more than 15 per cent of the share capital of the company. It was not in dispute that the Appellants were proprietary Directors, holding more than 15 per cent of the ordinary share capital of the company, and thus, had a material interest in the company.

6. The business of the company was what the Appellants described as [redacted], being smaller operations than the [redacted], with a loyal customer base. In 2017, the Appellants opened their first company location with various other locations being opened thereafter until 2020, when the COVID-19 pandemic commenced and the locations were forced to close.

7. The Respondent submitted that at that time there were outstanding Employer's PAYE/PRSI ("PREM") liabilities for the company for the periods 2020, 2021 and 2022. As the Appellants each owned more than 15 per cent of the shares of the company, the Respondent submitted that the PAYE associated with the salary paid to the Appellants from the company was excluded from their Notices of Assessment for each of those years. The result of this, the Respondent stated, was that the Appellants were personally liable for the tax on the salary paid to them by the company in accordance with section 997A TCA 1997.

8. The Appellants submitted that their situation differs from other situations where section 997A TCA 1997 may be applicable, because they had availed of the Respondent's Debt Warehousing Scheme, in respect of certain taxes of the company for the relevant years.

9. Moreover, the Appellants submitted that they had engaged an advisor and were in the process of preparing a Small Company Administrative Recovery Process ("SCARP") application. However, the Respondent was not on notice of the preparation of that application by the Appellants and in November 2023, the Sherriff entered two of the Appellants locations, the result of which they stated was that on 20 November 2023, the company went into liquidation.

Legislation and Guidelines

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

11. Section 997A TCA 1997, Credit in respect of tax deducted from emoluments of certain directors, provides *inter alia* that:

    (1)(a) In this section—

"control" has the same meaning as in section 432;

"ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company.

(b) For the purposes of this section—

(i) a person shall have a material interest in a company if the person, either on the person's own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

(ii) the question of whether a person is connected with another person shall be determined in accordance with section 10.

(2) This section applies to a person to who, in relation to a company (hereafter in this section referred to as "the company"), has a material interest in the company.

(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given in any assessment raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.

(4) Where the company remits tax to the Collector-General which has been deducted from emoluments paid by the company, the tax remitted shall be treated as having been deducted from emoluments paid to persons other than persons to whom this section applies in priority to tax deducted from persons to whom this section applies.

(5) Where, in accordance with subsection (4), tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies, the tax to be so treated shall, if there is more than one such person, be treated as having been

deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.]

(6) Where, in accordance with subsection (5), the tax to be treated as having been deducted from the emoluments paid to each person to whom this section applies exceeds the actual amount of tax deducted from the emoluments of each person, then the amount of credit to be given for tax deducted from those emoluments shall not exceed the actual amount of tax so deducted.

……..

Evidence and Submissions

Appellants' evidence and submissions

12. The Commissioner sets out hereunder a summary of the evidence and submissions made by the Appellants:

12.1. The Appellants testified that in 2017, they opened their first company location and due to the profitability of the company, in 2018, the Appellants opened two additional locations. The Appellants stated that in 2020, they had agreed to open two further locations. The Appellants submitted that their business was thriving, employing around 32 people and it was consistently meeting its tax obligations without any debt. However, everything changed when the COVID-19 pandemic occurred in 2020, and the locations were forced to close. The Appellants stated that at the height of their business they had seven locations.

12.2. The Appellants testified that they availed of the government supports introduced at the time, such as the Temporary Wage Subsidy Scheme ("TWSS") and the Employment Wage Subsidy Scheme ("EWSS") which were critical for the survival of the company and its payroll, even though the locations had closed. In addition the company availed of the Respondent's Debt Warehousing Scheme. The Appellants submitted that the Debt Warehousing Scheme was also critical, as it allowed the Appellants to submit PAYE returns without having to transfer the actual funds to the Respondent and without this relief, the company would not have been in a position to pay its employees, including the Appellants, while the business was closed.

12.3. The Appellants testified that the company did not recover to pre pandemic levels of business as there was a shift in consumer habits, such as working from home

and the city centre locations were impacted significantly. The Appellants gave evidence that the company's busiest location in the city centre was now trading at 30 per cent of the numbers it had previously traded. The Appellants stated that they attempted many strategies to boost the business, but the company was consistently losing money each month. The Appellants submitted that by mid-2023, they engaged advisors to explore their options to keep the company afloat.

12.4. The Appellants stated that they made a decision to close the unprofitable locations to preserve the viability of the profitable segments of the company. However, this decision introduced a new set of challenges, in particular the long-term leases which they had with landlords and which they could not simply terminate. The Appellants submitted that they were legally bound to continue paying rent, council rates, insurance and service charges on the unprofitable locations. Ultimately, in 2023, pursuing a SCARP application, emerged as the only feasible solution for the company.

12.5. The Appellants gave evidence that despite the extensive work on the SCARP application with their advisors during August and September 2023, the Respondent abruptly called in the debt from the Debt Warehousing Scheme which the Appellants had warehoused and assigned a Sherriff to collect the debt. The Appellant testified that this occurred on or about 17 and 18 November 2023. Thereafter, on 20 November 2023, the company went into liquidation.

12.6. The Appellants testified that the Sherriff and his team entered two of their locations by drilling the locks open at the locations. The Appellants gave evidence that the Sherriff took the flooring and brackets off the walls, completely destroying the locations. The Appellants stated that it was vicious thuggery and what equipment they could not take they destroyed, such as putting knives through the [redacted] in the locations.

12.1. The Appellant testified that this action by the Sherriff rendered the company unable to trade or provide services to its members in those locations, forcing the company to halt [redacted] and pushing the company into immediate liquidation. The Appellants stated that the result of this was 35 employees lost their jobs, [redacted], and landlords lost their tenants. Moreover, the Appellants lost the business that they had spent seven years building.

12.2. The Appellants stated that all of the liabilities are that of the company's and they are not personally liable for the debts of the company. Moreover, they had availed

of the Debt Warehousing Scheme, thus section 997A TCA 1997 was not applicable to them.

12.3. The Appellants submitted that their inability to progress the SCARP application, resulted in them being denied the opportunity to make the company a success, which in turn caused them to [redacted].

Respondent's submissions

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

13.1. The Appellants filed their 2022 income tax return through the Revenue Online System ("ROS"). However in accordance with section 997A TCA 1997, the Respondent amended the Appellants' assessments, the subject matter of these appeals, the result of which was the Appellants were personally liable for tax on the salary paid to them by the company.

13.2. The Appellants were Directors of the company which went into liquidation in November 2023. At that time, there were monies owing on the deemed returns for December 2021 and for January, February, March and April 2022. The amount of the outstanding liabilities to PREM from the company was in the amount of €200,075. Had the company been in a position to discharge this amount, the credits would not have been removed from the Appellants. Section 997A TCA 1997 is mandatory in its requirements.

13.3. As the Appellants each owned more than 15 per cent of the shares in the company and had a material interest in the company, the PAYE associated with the salary paid to them from the company was excluded from their assessments for each of the relevant years, the result of which was the Appellants being personally liable for tax on the salary paid to them by the company, in accordance with section 997A TCA 1997.

13.4. In relation to the Appellants' belief that the Debt Warehousing Scheme alters the interpretation of section 997A TCA 1997, the Respondent has provided the Appellants with the relevant Tax and Duty Manual which outlines the Respondent's interpretation and application of this legislation. The Respondent submitted that while the company was making payments towards its warehoused debt, it was inconsistent, hence the company's warehoused debt arrangements

were revoked and the debts became due immediately. The result of this, for the Appellants, was the application of section 997A TCA 1997 and the assessments being raised which are the subject matter of these appeals.

13.5. In circumstances where the Appellants own more than 15 per cent of the shares in the company and as the tax deducted was not remitted by the company to the Collector General, the Respondent was precluded by legislation in allowing a credit for tax deducted from the emoluments paid by the company to the Appellants. The Respondent's case officers stated that they were not aware of the Sherriff's actions, as described nor were they involved in the Respondent's decision to revoke the arrangements of the company in respect of the Debt Warehousing Scheme.

Material Facts

14. Having read the documentation submitted and having listened to the evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:-

14.1. The Appellants were proprietary Directors of the company.

14.2. The Appellants held more than 15 per cent of the ordinary share capital of the company.

14.3. The Appellants had a material interest in the company.

14.4. On 20 November 2023, the company went into liquidation.

14.5. There were outstanding PREM liabilities of the company for the years 2020, 2021 and 2022.

14.6. The company availed of the Respondent's Debt Warehousing scheme in relation to certain taxes.

14.7. The company's debt warehousing arrangements were revoked by the Respondent, for failure to comply with the terms and conditions of the scheme. The result of this was that the company's debt became due immediately.

14.8. The company had outstanding PREM liabilities in the amount of €200,075.

14.9. Prior to the liquidation of the company, the Appellants were in the process of preparing a SCARP application with its advisors.

Analysis

15. The Appellants' appeals relate to various assessments raised by the Respondent in accordance of section 997A TCA 1997, on the basis of outstanding PREM by the company of which the Appellants were proprietary Directors.

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 that:

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".*

17. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he stated 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…"*

Section 997A TCA 1997

18. Section 997A(1)(b)(i) TCA 1997 defines a person having a material interest in a company as: *"(i) a person shall have a material interest in a company if the person, either on the person's own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company*."

19. Section 997A(2) TCA 1997 provides that *"(2)This section applies to a person to who, in relation to a company (hereafter in this section referred to as "the company"), has a material interest in the company.*"

20. It was not in dispute that the Appellants were proprietary Directors of the company, holding more than 15 per cent of the ordinary share capital of the company, and thus, had a material interest in the company, in accordance with section 997A(1)(b)(i) TCA 1997.

21. Section 997A(3) TCA 1997 provides that *"(3)Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given in any assessment raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations*.". (emphasis added)

22. The Commissioner notes that the Appellants had availed of the Respondent's Debt Warehousing Scheme. It is the case that the warehousing of tax debt assisted businesses who experienced cash-flow and trading difficulties during the COVID-19 pandemic and it related to taxes such as PREM, TWSS and EWSS. The Commissioner notes that the Respondent's Tax and Duty Manual entitled "Level 1 Compliance Programme – Debt Warehousing Scheme", at paragraph 1.2, describes the scheme as follows:

    "*The Debt Warehousing Scheme (DWS) allows for the deferral of the payment of VAT, Employer PAYE, certain self-assessed income tax labilities, and also subsidy overpayments under the Temporary Wage Subsidy Scheme (TWSS) and the Employment Wage Subsidy Scheme (EWSS). As part of the response to the Covid-19 crisis, the DWS was automatically made available to customers in Business and Personal Divisions and available, on application, to medium-sized enterprises and Large Corporate taxpayers, subject to specific criteria. Under the provisions of the legislation, a taxpayer who avails of the DWS must meet their obligations under the Tax Acts. Taxpayers must have filed all relevant returns on time and accounted for all relevant liabilities in order to qualify for debt warehousing. Current taxes must also be filed and paid as they fall due*".

23. The Commissioner notes the case officers submission that whilst they were not involved in the decision of the Respondent to revoke the warehousing arrangements of the company's debt, it was the case that the company had liabilities for PREM in the amount of €200,075, and payments were being made inconsistently, not in accordance with the terms and conditions of the Debt Warehousing Scheme.

24. As set out in the preceding paragraphs, section 997A(3) TCA 1997 provides that no credits shall be allocated to the Appellants in respect of deductions made by the company from the Appellants' emoluments, in circumstances where the company has unpaid taxes that ought to have been deducted and remitted by the company to the Respondent. The Commissioner notes that the Appellants argued that the unpaid taxes were subject to the

Debt Warehousing Scheme. However, the Commissioner observes that the company's arrangements were revoked by the Respondent, due to its failure to adhere to the terms and conditions of the Debt Warehousing Scheme and that the amount of €200,075 was outstanding in terms of the company's debt. The Appellants offered no evidence to dispute this submission on the part of the Respondent.

25. The Commissioner is satisfied that section 997A(3) TCA 1997 is clear and its meaning self-evident. In determining this appeal, the Commissioner has given the words in section 997A(3) TCA 1997 TCA 1997 their ordinary and natural meaning. The Commissioner is mindful of the summary of the principles that emerge 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;……..."*

26. The Commissioner is satisfied that the plain and ordinary meaning of the words in section 997A(3) TCA 1997 are that notwithstanding any other provision of the Income Tax Acts or regulations made under this Chapter, no credits for tax deducted from the emoluments paid by the company, shall be given in any assessment raised, in circumstances where the Appellants have not provided documentary evidence to show that the tax has been remitted by the company to the Collector General.

27. The Commissioner finds that section 997A(3) TCA 1997 confers no authority or discretion on the Commissioner to direct that credits should be allocated to the Appellants in respect of deductions made by the company from the Appellants' emoluments, in circumstances where the Appellants have not provided documentary evidence that tax has been remitted by the company to the Collector General. No such documentary evidence was produced

herein and in fact, it was accepted that the company had not remitted the tax to the Collector General due to the Debt Warehousing Scheme, which the Appellants submitted changed or precluded the application of section 977A TCA 1997. The Commissioner was presented with no legislative provisions supporting such an interpretation of section 997A(3) TCA 1997 or that it was restricted in some way due to the Respondent's Debt Warehousing Scheme.

28. As set out above, 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. The Commissioner is satisfied that the Appellants have not discharged the burden of proof to satisfy the Commissioner that the Respondent was incorrect in its decision not to allocate a credit for tax deducted by the company from the Appellants' emoluments pursuant to section 997A TCA 1997.

29. The Commissioner has considerable sympathy for the Appellants and the circumstances outlined by them. Moreover, the Commissioner notes the frustration and upset described by the Appellants, in relation to the manner in which it was contended that the Sherriff operated in November 2023, at two of the Appellants' locations. Nonetheless, the Commissioner's jurisdiction is limited to interpreting and applying the law as enacted by the Oireachtas. The Commissioner has no supervisory role over the Respondent nor does she have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent. The Commission's jurisdiction "*is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA*", as per *Lee v Revenue Commissioners* [2021] IECA 18.

Determination

30. As such and for the reasons set out above, the Commissioner determines that the Respondent was correct in disallowing a credit for tax deducted by the company from the Appellants' emoluments pursuant to section 997A TCA 1997. Therefore, the Commissioner must find that the assessments for the relevant years, as set out in paragraph 1 of this Determination, must stand.

31. The Commissioner appreciates this decision will be disappointing for the Appellants. However, the Commissioner is charged with ensuring that the Appellants pay the correct tax and duties. The Appellants were correct to appeal to have clarity on the position.

32. 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

33. 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

34. 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
11 February 2025