Ref: 13TACD2019

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal, pursuant to Taxes Consolidation Act 1997, section 997A(8) against a decision of the Respondent to deny a credit for the tax deducted from the Appellant's emoluments but not remitted to the Respondent by a company in which the Appellant held a material interest.

Background

2. The Appellant was a director of and held a 70% shareholding in **Company Name Redacted** (the Company). During the year ended 31st December 2012 the Appellant received emoluments from the Company amounting to €54,543. None of the deductions in respect of tax, Employee PRSI and Universal Social Charge amounting to €13,824, €2,181 and €3,136 respectively reflected on the Appellant's Form P60 for that year were remitted to the Respondent by the Company.

Legislation

3. Taxes Consolidation Act 1997 (TCA), section 983 defines 'emoluments', as:

> *"anything assessable to income tax under Schedule E, and references to payments of emoluments includes references to payment on account of emoluments".*

4. TCA, section 985 provides that:

> *"On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this*

Chapter, be deducted or repaid by the person making the payment notwithstanding that–

(a) when the payment is made no assessment has been made in respect of the emoluments, or
(b) the emoluments are in whole or in part emoluments for some year of assessment other than that during which the payment is made.

5. Finance Act 2005 inserted section 997A into the Taxes Consolidation Act 1997 to deny a credit for tax deducted from the emoluments paid to certain directors and employees in the absence of documentary evidence that confirms that the tax deducted from those emoluments was remitted to the Collector-General. The relevant provisions provide:

"(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 against the amount of tax chargeable 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."

6. The appeal procedures are governed by subsection 8 which state:

"A person aggrieved by a decision of the Revenue Commissioners in relation to a claim by that person for credit for tax deducted from emoluments, in so far as the decision was made by reference to any provision of this section, may appeal that decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of that decision."

Submissions

Appellant

7. It was submitted that the emoluments paid to the Appellant were either the actual net payments after deducting PAYE, PRSI and USC, or as what transpired in this case, an equivalent net amount credited to her director's loan account. It was therefore argued that the gross salary was not credited to her director's loan account but the net salary after the relevant deductions. As a consequence, no tax was deducted from the net salary, as that was the amount left after the appropriate deductions had been made. Therefore the amount of tax for which no credit is available under TCA, section 997A(3) was nil. To this extent, the Appellant sought to rely on the interpretation of the word "*paid*" in describing the remuneration, as a restrictive adjective, to describe the quantum of remuneration that the Appellant received.

8. The Appellant also relied on TCA, section 997(1) which provides that "*credit shall be given for the amount of any tax deducted from the emoluments*". In this case, the emoluments were not specified as those paid, and thus constitute gross emoluments. It was thus argued that TCA section 997(1) conferred an entitlement to credit for tax deducted from the gross emoluments amounting €13,824.75 thus entitling the Appellant, by virtue of TCA, section 997(1) to a credit for the sum of €13,824.75, being the tax deducted from the gross emoluments. However the Appellant argued that that entitlement was restricted by virtue of TCA section 997A(3) but that restriction was of a nil amount.

9. The Appellant also asserted that the denial to a particular class of taxpayers such as those owning more than 15% of a company's ordinary share capital a credit for PAYE deducted constituted a sanction. The sanction arises to penalise members of that class of taxpayers for failing to remit PAYE due by the companies which they control or influence.

10. In this regard, the Appellant argued that if it is accepted that TCA, section 997A relates to the imposition of a penal or other sanction, then section 5 of the Interpretation Act 2005 applies a construction consistent with the plain intention of the Oireachtas. As such it could be stated that it is not clear what was the plain intention of the Oireachtas. If the intention was to put all taxpayers on an equal footing, that would not be achieved by implementing TCA, section 997A in the manner desired by the Respondent. This is due to the fact that the affected taxpayer would be assessed to income tax on income neither paid to him/her, nor paid over to the Respondent on his or her behalf. No other group of taxpayers are treated in such an inequitable way. It was submitted that if it is not possible to ascertain what the plain intention of the Oireachtas was, that is another reason not to disturb the literal meaning of the TCA, section 997A (3)).

11. The Appellant submitted that TCA, section 997A(3) produces an absurd result and proceeded to rely on the Interpretation Act 2005, section 5 and the principles of statutory interpretation as set out in *Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.

12. The Appellant's Form P.60 for the year ended 31st December 2012 which reflected an amount of €54,543 paid to the Appellant was produced in evidence and accepted by the Appellant as being a proper reflection of the remuneration paid and the amount of statutory deductions imposed and deducted.

Respondent

13. The Respondent submitted that the definition of emoluments contained in TCA, section 983 means "*anything assessable to income tax under Schedule E, and references to payments of emoluments includes references to payment on account of emoluments"* and that this definition applies to TCA, Chapter 4 of Part 42.

14. The Respondent submitted that the Appellant's argument as to the interpretation of TCA section 997A failed to consider the statutory definition of the word '*emoluments*' that applies to that section and that TCA, section 997A is clear and unambiguous in its denial of a credit for tax deduced under PAYE in the circumstances pertaining to the Appellant.

15. The words "*notwithstanding any other provisions*" as contained in TCA, section 997A(3) overrides the Appellant's entitlements under TCA, section 997(1). There is only one definition of '*emoluments*' and as such there can be no anomaly or absurdity arising from the interpretation of the two sections.

Analysis

16. The assertion that there was an entitlement to claim a credit for the tax deducted from the Appellant's emoluments by the Company notwithstanding that such taxes were not remitted to the Respondent fails to recognise that companies, as inanimate bodies, can only act through the actions of its directors and in accordance with their contractual and fiduciary obligations and powers vested in the board of directors in accordance with the Articles of Association. Furthermore, while tax was deducted from the Appellant's emoluments, a decision was made to employ those funds elsewhere as opposed to the intended purpose of discharging those taxes and therefore favoured another cause or creditor to the detriment of the Respondent.

17. As such, the demonstrable effect of TCA, section 997A is to deny persons in positions of control and influence over a company's business activities from claiming a credit for unpaid taxes that ought to have been deducted and remitted by such companies to the Respondent.

18. In this regard, it was not disputed that remuneration of €54,543 was paid to the Appellant for the year ended 31st December 2012 from which taxes and other statutory liabilities were deducted. There was also no disagreement that such income and deductions were accurately recorded on the Form P.60 for that year. The Appellant also accepted that the Schedule E charging provision as set out in TCA, section 112 provides that tax "*shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment*" [Emphasis added].

19. The Appellant also acknowledged the statutory responsibility on the Company when paying the remuneration to deduct the tax from such income pursuant to TCA, section 985.

20. Therefore, emoluments of €54,543 were paid to the Appellant from which the Company withheld the tax and other statutory deductions and transferred the net funds to the Appellant's director's account. Therefore, I cannot accept the Appellant's argument that only the net amount was paid to the Appellant.

21. Finally, the Appellant submitted that TCA, section 997A gave rise to an absurdity which should be interpreted in favour of the taxpayer. TCA, section 997A(3) provides that '*no credit for tax deducted from the emoluments paid by the company …. shall be given against the amount of tax chargeable in any assessment raised on the person … unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General'*. However, I am of the view that the statutory wording is clear and precise and that there is no ambiguity. As such the interpretative approach to be applied is a literal one taking into account the jurisprudence in relation to the interpretation of taxation statutes based on a long line of authorities including *inter alia*, *Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.

Conclusion

22. I have therefore determined that the assessment for the year 2012 is correct and the assessment stands. As such, this appeal is therefore determined in accordance with Taxes Consolidation Act 1997, section 949AK.

Conor Kennedy
Appeal Commissioner
27th February 2019

No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.