AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

10TACD2023

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against a refusal by the Revenue Commissioners ("the Respondent") to allow the Appellant to avail of the Covid Restrictions Support Scheme ("CRSS") for the periods 20th December 2020 to 21st March 2021.

2. CRSS was introduced by section 11 of the Finance Act 2020. It amends the Taxes Consolidation Act 1997 ("TCA 1997") by inserting two sections, section 484 and section 485.

3. Section 484 TCA 1997 sets out the objectives of the CRSS which it states are *"to provide the necessary stimulus to the economy…. so as to mitigate the effects, on the economy, of Covid-19..."*

4. Section 485 TCA 1997 sets out the eligibility criteria and details of the scheme. It permits eligible businesses to make a claim to the Respondent for a payment known as Advance Credit for Trading Expenses (ACTE).

5. Section 485 (24) TCA 1997 provides a right of appeal to the Commission where a Revenue Officer determines an entity does not meet the eligibility criteria for the scheme. In accordance with that section, the Appellant makes its appeal.

Background

6. The Appellant operates a shoe sales business in [redacted]. On 16th November 2020, the Appellant wrote to the Respondent seeking to participate in the CRSS as it had an online filing exemption. In general an entity is required to submit and pay its tax returns and communicate with the Respondent via their online system, "ROS". However an entity may apply to the Respondent to be excluded from the requirement to pay and file electronically on the grounds of a lack of capacity to fulfil their obligations. In this context "capacity" means sufficient access to the Internet.

7. As the Appellant had insufficient access to the internet it had been granted an online filing exemption but for inclusion on the CRSS it was required to register for and submit claims via ROS. The Appellant requested that they be registered on ROS for this purpose in its letter of the 16th November 2020.

8. The Appellant concluded that correspondence by stating:

> "'*[…] as we are given to understand that there is an eight week period after the official lockdown begins when the claim for CRSS must be lodged […]*'

9. Over the subsequent weeks, the Respondent made various efforts to contact the Appellant's director, including seeking contact details from the Appellant's accountant.

10. On 17th December 2020, the Respondent advised the Appellant that it was now registered for ROS and it should apply online for the CRSS payments. The Appellant replied to this correspondence on the same date and advised the Respondent that it had completed its CRSS application.

11. On 18th December 2020, the Respondent advised that it had not received the application and provided step-by-step instructions regarding the registration process.

12. On 24th December 2020, the Appellant advised the Respondent that it should have applied for 7 weeks of payments instead of the 6 weeks that it had applied for on 17th December 2020. Later that day, the Appellant wrote again stating that it should

have sought 8 weeks of CRSS payments as opposed to the six or seven as it had previously sought.

13. On 31st December 2020, the Respondent advised the Appellant by email that:

> "*Due to government level 5 guidelines, customers were restricted from accessing non-essential retail shops on the 22nd October 2020. Those restrictions were lifted, and the sector could recommence trading from 1st December 2020. The business was closed 5 full weeks and 2 part weeks. The business is being allowed to claim for the full 5 weeks and 1 of those part weeks. The business is also allowed claim a restart week. As the shop has already submitted a claim for 6 weeks, it is in order for the business to claim one restart week. To do this, for example for week 7th to 13th December, when submitting the claim tick the 'restart' option. Yes the link you provided in your email does mention 8 weeks, however a business should only submit claims for periods when they are eligible. For example other sectors are impacted by restrictions while level 3 is in place"*.

14. On 20th May 2021, the Appellant advised the Respondent as follows:

> "*Our store recently reopened on Monday 17th May after being closed since 31st December 2020 and we tried today to make a CRSS claim for the 20+ weeks we have been closed. However, the system would only allow us to make a claim for 8 weeks, which we have done this morning. Are you able to manually process the 12+ weeks we are eligible for under CRSS? If not, how do we go about being able to claim for the missing 12+ weeks through ROS?*'

15. By reply dated 24th May 2021, the Appellant was advised:

> "*Please note that under Section 5.3 of the CRSS guidelines a claim must be made no later than 8 weeks from the date on which the claim period commences. This is the reason you could only claim for 8 weeks prior to the date of your latest CRSS claim. The onus is on you to ensure that claims are submitted in a timely manner. You should now submit a Restart claim for week commencing 17/05/21 and you will receive 2 double week payments. Your CRSS payments will then cease.*"

16. On 27th May 2021, the Appellant replied stating:

> "*There was no indication in any public domain that the CRSS payment would only be backdated eight weeks. I do not believe that was the spirit of the law*

with which CRSS was enacted. At this very difficult time for all concerned it is hard to believe that Revenue would deny our company its rightful & needed CRSS payments. By your intention we would have had to break the law to travel to our office to claim CRSS on an interim basis. Is that what you are claiming? That we should have broken travel restrictions to abide by Revenues mandate on claiming CRSS. I do not believe Revenue would encourage such actions.

I await to hear from you in the hope that common sense & fairness will prevail on this occasion. It would not be the best use of our time - when staff shortages are a glaring issue for retail stores - to have to go through an appeals process to receive the CRSS we are clearly entitled to."

17. By letter dated 28th May 2021, the Respondent provided a detailed reply as follows:

"*Revenue has published detailed guidelines on the operation of the scheme on its website at www.revenue.ie. Section 5 of those Guidelines explains the time limits for submitting claims under the scheme. There is an eight-week time limit within which eligible businesses have to make their claim for payment under the CRSS.*

Section 485 (9) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of Finance Act 2020) provides that a claim for an "advance credit for trading expenses" (i.e. a weekly CRSS payment) must be made no later than 8 weeks from the date on which the claim period to which the claim relates commences. For claimants who apply to register within the 8-week period, and whose applications are registered after the expiry of the 8-week period, claims must be made within 3 weeks of the date of registration.

Following full consideration of your application and further submissions, Revenue has determined that you have not submitted a claim for CRSS within the time frame as set out in the legislation. Accordingly, this renders you ineligible to avail of the CRSS for the period involved - 20/12/20 – 21/03/21 and Revenue has no discretion in the matter. The legislation does not allow for backdating of claims. However, once you continue to satisfy the qualifying criteria for claim periods going forward, you will be paid CRSS for those periods."

18. On 30th June 2021, the Respondent advised that a review had been completed on the Appellant's CRSS claim and that:

"*Under the Living with Covid-19 Plan, restrictions for your business sector were eased on May 17th 2021. As such, you are eligible to submit one Restart Week claim whereby the system will automatically calculate the bonus of four times the weekly amount. Following a review of Revenue records, I note you have already submitted an ordinary CRSS (ACTE) claim for the weeks 17th to 23rd May, 24th to 30th May, 31st May to 06 June, 07th to 13th June, 14th to 20th June, 21st to 27th June and 28th June to 04th July 2021. Whereas a Restart Week was appropriate. A claim for the Restart Week was then submitted for 05th to 11th July 2021. As a result, the claim for the period May 17th to 04th July has been withheld and the four weeks bonus Restart Week will be issued to you at €878.80 x 4 = €3,512.92.*"

19. The Appellant advised following it on review on 5th July 2021 that:

"*From January 1st our company was closed due to government restrictions & was entitled to CRSS payments from a period of 19+ weeks. When a restart week is added to our claim we have now been left short one full week payment, an amount of €878.23. For the Revenue Commissioners to suddenly move the goalposts & leave our company short funds is not the original intentions of CRSS. We would therefore ask you to review our claim & forward the correct claim funds to our account. You might confirm when we can expect the amount due to us*."

20. By reply dated 19th July 2021, the Respondent advised as follows:

"*As non-essential retail premises were permitted to re-open on 17th May 2021, your business was eligible to submit a claim for a Restart payment beginning on this date, at a double rate for a period of two weeks. The system will ordinarily automatically calculate the restart payment due for the double payment and issue one single payment.*

From a review of your CRSS payments, I note that you submitted ordinary claims for a 7 week period (17th May to 04th July 2021) when a Restart Week was appropriate for the week 17th to 23rd May 2021.

You then submitted a claim for the Restart Week 05th to 11th July 2021 which was subsequently cancelled.

The Restart Week for your business is calculated at the rate of ordinary ACTE €878.23 x 4 = €3512.92 and I note that this has been repaid to you."

21. By correspondence dated the 22nd July 2021, the Appellant insisted that it was entitled to claim CRSS payments for all weeks that the business was shut between January and May 2021 due to government restrictions and therefore there was a '*shortfall in payments received of one week*', or €878.25

22. Following a further review, by correspondence dated the 26th July 2021, the Respondent provided a detailed breakdown of the payments paid to the Appellant and advised that:

> "*From the review, it appears that payments for all claims periods submitted have been re-paid to you as follows:*
>
> *Claim period: 26th October - 06th December 2020. €878.23 x 6 weeks = €5,269.38*
>
> *Repayment date: 29/12/2020*
>
> *Claim period: 07th December to 13th December 2020 (Restart Week) €878.23 x 1 week = €878.23*
>
> *Repayment date: 07/01/2021*
>
> *Claim period: 22nd March to 16th May 2021 €878.23 x 8 weeks = €7, 025.84*
>
> *Repayment date: 24/05/2021*
>
> *Claim period: 17th May to 23rd May (Restart Week payment) €878.23 x 4 weeks = €3,512.92*
>
> *Repayment date: 02/07/2021*
>
> *Total claims repaid: €16,686.37*"

In that correspondence the Appellant was asked to provide the date on which it was suggested that a CRSS claim was made but not paid.

23. By reply dated 17th August 2021, the Appellant did not provide the date upon which it was alleged that an unpaid claim was made and instead, stated as follows:

> "'*[…] you are again missing the salient point that the company was entitled to a CRSS payment for every week of the government enforced closure - plus a restart week - from 1st January 2021 and that, to date, this has not been fully paid to our company by Revenue.*

We acknowledge that all claims from 2020 have been paid in full by the Revenue Commissioners and we are solely focusing on the enforced closure period from 1st January 2021 onwards for which our company has received a significant shortfall, as stated in our previous emails.

We once again request that this be paid by Revenue with immediate effect."

24. The Respondent replied to the Appellant on the same date and reiterated:

"*As outlined in Section 3 of the CRSS guidelines, applying for the CRSS scheme is a 2 step process: 1. register for CRSS on ROS and 2. then complete a claim in respect of a claim period or claim periods.*

It also states a claim must be submit no later than 8 weeks from the start date on which the claim period commences.

Whereby a business may have been eligible for this support for a particular period, in this case the periods from 28th Dec 2020 to 19th March 2021 (sic), and if that period was outside the 8 week time limit when submitting a claim, in this case claim was submitted on 20th May 2020, unfortunately the weeks prior to the 22/03/21 that were unclaimed were no longer available.

As advised by my colleague in the previous email, payments for all claims periods submitted have been repaid."

25. On 29th August 2020, the Appellant replied to that correspondence as follows:

"*We are in receipt of your reply and we cannot express to you how disappointed we are with you & the Revenue Commissioners inability to grasp the issue at hand and we therefore feel the need to spell it out to you. (1) The government enforced lockdown at the end of December 2020 left us with an inability to access our office and store, and specifically the computer on which the ROS Digital Signature is stored. We were therefore unable to sign off on any claim. (2) To do so would not only have made us in breach of travel restrictions & guidelines on public travel, but also put our staff at unnecessary risk of both catching & spreading Covid. Speaking personally, I would not have travelled to my work during that time as I both use public transport & have a number of health issues which leaves me at greater risk from a Covid infection. (3) This would not matter if the Revenue had not enforced a completely unnecessary & restrictive eight week claim period, in a 20 week lockdown period, which it appears was solely put in place to disqualify small companies from claiming*

their legally entitled payments. Are there many other companies in our position who have been denied claims due to being outside the unfair eight week claim period? (4) As such, it would be appreciated if you could refer this matter to your supervisor for review. CRSS was set up with good intentions from the government & we have no doubt it was not their objective to have it denied to small businesses which are in dire need of support. While we would not like to take matters into our own hands by deducting the CRSS underpayment from VAT Return we will be left with little choice if your office cannot make a fair judgement on this case. We would therefore ask that a more senior person review this issue in the hope of a fair & common sense outcome on this occasion."

26. On 20th September 2021, the Respondent issued a letter to the Appellant requesting that it reply to that correspondence within 10 days detailing the specific grounds or basis that the Appellant contended it met the qualifying criteria and include any relevant documentation to support that application. The Appellant relied to that correspondence in similar terms to its correspondence of 29th August 2021 save it alleged misfeasance against the Collector General.

27. The Respondent issued a determination notice on 1st October 2021 rejecting the Appellant's claim for CRSS payments between 28th December 2020 and 21st March 2021 and stated within that determination:

> "'*Section 485 (9) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of Finance Act 2020) provides that a claim for an "advance credit for trading expenses" (i.e. a weekly CRSS payment) must be made no later than 8 weeks from the date on which the claim period to which the claim relates commences.*
>
> *Your business successfully registered for the scheme and completed claims for period(s) between 26/10/2020 and 13/12/2020. Claims were not received for the periods 28/12/2020 to 21/03/2021 and these now fall outside the 8-week limit for claims as outlined in legislation. Claims for the periods 22/03/2021 to 23/05/2021 have however been successfully claimed.*
>
> *Having considered all the information provided, Revenue has determined that you have* ***not submitted a claim for CRSS within the time frame as set out in the legislation*** *[emphasis added]. Accordingly, this renders you ineligible to avail of the CRSS for the period – 20/12/2020 to 21/03/2021*."

28. By reply dated 6th October 2021, the Appellant stated:

"*With all due respect the rationale and spurious justification for denying the company the CRSS claim for the period in question is based on, what appears to be, flawed and disingenuous grounds. […] it appears we have to point out the shortcomings, inaccurate and consequent flawed conclusion of your departments' review. It would suggest that the Revenue Commissioners is perhaps deliberately guilty of misfeasance and prevarication in this instance...*"

29. On 20th October 2021, the Appellant lodged a Notice of Appeal with the Commission in respect of the determination notice and the hearing was held remotely before the Commission on 12th September 2022 with the Appellant being represented by [redacted] ("the Appellant director"). The Appellant director was articulate and well prepared. The Respondent was represented by Counsel, its solicitor and members of its staff.

30. After the Appellant lodged its appeal with the Commission but in advance of the hearing being held, the Appellant made a stage 1 and stage 2 CS4 complaint to the Respondent (a stage 1 complaint is a formal complaint to the Respondent's office where the taxpayer's affairs are managed whereas a stage 2 complaint is a local review generally conducted by the Manager of the Respondent's office where the taxpayer's affairs are managed). In addition, the Appellant director lodged a stage 3 complaint (which is a review of the complaint carried out by an independent internal and external reviewer) and made representations to the Respondent's Chairman who responded as follows:

"*In summary,* [redacted] *correctly received all CRSS payments, including 'restart' payments, due in respect of timely claims made. Revenue has no authority to operate outside of the legislation as set down and as such cannot pay claims made later than the eight-week time limit. I note that* [redacted] *has appealed the matter to the Independent Tax Appeals Commission (TAC), which is the appropriate forum to determine the correctness of Revenue's interpretation of the legislation. Finally, your inferences that there was misfeasance or flawed conclusions in the administration of the CRSS by Revenue are firmly rejected as is your assertion that taxpayers were being forced to breach travel restrictions to attend the office to complete subsidy claims*.'

31. Further correspondence exchanged between the Appellant and the Respondent's Chairman's office between November and December 2021 wherein the Chairman's

office reiterated that the Commission was the appropriate forum for the matter to be resolved.

32. In addition, between December 2021 and March 2022, the Appellant was informed (separately) of the outcome of his earlier stage 1, 2 and 3 complaints. Each of these complaints were dismissed and the Appellant was advised that the Respondent had properly complied with the provisions of the TCA 1997 in strictly applying the eight-week claims limitation period. That correspondence noted the matter was now in the hands of the Commission and that they (the Commission) would adjudicate upon the matter and decide whether the actions of the Respondent were in compliance with the legislation.

Legislation

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

Section 484 TCA 1997 – "*Objectives of Section 485, purposes for which its provisions are enacted and certain duty of Minister for Finance respecting those provisions' operation*" provides:

(*1) (a) The objectives of section 485 are to—*

(i) provide the necessary stimulus to the economy (in addition to that provided by Part 7 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and the Financial Provisions (Covid-19) (No. 2) Act 2020) so as to mitigate the effects, on the economy, of Covid-19, and

(ii) if, as of 1 January 2021, no agreement stands entered into between the European Union and the United Kingdom (with respect to the future relations between them on the relevant matters), mitigate the effects on the economy which are apprehended may arise therefrom.

(b) In paragraph (a) 'relevant matters' means the matters described in Part II of the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom[3]*.*

(c)The purposes for which the several provisions of section 485 (in this section referred to as the 'Covid Restrictions Support Scheme') are, in furtherance of the foregoing objectives, enacted are:

(i) in addition to the provision of basic mechanisms to fulfil those objectives, to ensure the efficient use of the Covid Restrictions Support Scheme so as to minimise the cost to the Exchequer of the scheme (so far as consistent with fulfilment of those objectives);

(ii)to avoid, where possible, allocation of resources to sectors of the economy that are not in need of direct stimulus by means of the Covid Restrictions Support Scheme (and which sectors may reasonably be expected to be restored to financial viability and an eventual growth path by the indirect effects of the scheme);

(iii) to protect the public finances through mechanisms for the discontinuance or amendment of one or more of the payments under the Covid Restrictions Support Scheme (or for their variation) in defined circumstances;

(iv) to take account of the need to reflect changes in circumstances of persons who, as businesses, are persons in respect of whom payments under the Covid Restrictions Support Scheme are being made, in cases where such persons avail themselves of other financial supports provided by the State;

(v) to take account of changes in the State's economic circumstances and the demands on its financial resources which may occur in the remainder of the current financial year and thereafter.

(d) It shall be the duty of the Minister for Finance to monitor and superintend the administration of the Covid Restrictions Support Scheme (but this paragraph does not derogate from the function of the care and management conferred on the Revenue Commissioners by section 485(21)).

(e) Without prejudice to the generality of paragraph (d), the Minister for Finance shall cause an assessment, at such intervals as he or she considers appropriate but no less frequently than every 3 months beginning on 13 October 2020, of the following, and any other relevant matters, to be made—

(i) up-to-date data compiled by the Department of Finance relating to the State's receipts and expenditure,

(ii)up-to-date data from the register commonly referred to as the 'Live Register' and data related to that register supplied to the Department of Finance by the Department of Business, Enterprise and Innovation (whether data compiled by that last mentioned Department of State from its own sources or those available to it from sources maintained elsewhere in the Public Service),

(iii)such other data as the Minister for Finance may consider relevant in relation to the impact from, and effects of, Covid-19 or the fact (should that be so) of there not being an agreement of the kind referred to in paragraph (a)(ii),

and, if the following is commissioned, by reference to an assessment, on economic grounds, of the Covid Restrictions Support Scheme that may be commissioned by the Minister for Finance and any opinion as to the sustainability of the scheme expressed therein.

(f) Following an assessment under paragraph (e), it shall be the duty of the Minister for Finance, after consultation with the Minister for Public Expenditure and Reform, to determine whether it is necessary to exercise any or all of the powers under subparagraphs (i) to (vi) of subsection (2)(a) so, as appropriate, to—

(i) fulfil, better, the objectives specified in paragraph (a), or

(ii)facilitate the furtherance of any of the purposes specified in paragraph (c), and, if the Minister for Finance determines that such is necessary, the powers under one, or more than one, as provided in that subsection (2)(a), of those subparagraphs (i) to (vi) shall become and be exercisable by the Minister for Finance.

(2) (a) Where the Minister for Finance makes a determination of the kind lastly referred to in subsection (1) (f), the Minister for Finance shall, as he or she deems fit and necessary—

(i)make an order that the reference in the definition of 'Covid restrictions' in section 485(1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period shall be limited in such respects as are specified in the order (including, if the Minister for Finance considers appropriate, by the specification of a requirement, with respect to the restriction of certain business activity, that particular business activity must be affected by the restriction to a specified extent) and an order under this subparagraph shall make such additional modifications to the provisions of section 485 as the Minister for Finance may consider necessary and appropriate in consequence of the foregoing limitation,

(ii) make an order that the day referred to in the definition of 'specified period' in section 485(1) as the day on which the period there referred to shall expire shall be such day as is later than 31 March 2021 (but not later than 31 December 2021) as the Minister for Finance considers appropriate and specifies in the order,

(iii)make an order that the percentage specified in section 485(4) (b) (i) shall be such a percentage, that is greater or lower than the percentage specified in that provision, as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

And

(ii) specifies in the order,

(iv)make an order that the percentage specified in subparagraph (i) (I) or subparagraph (ii)(I) of section 485 (7) (a) shall be such a percentage, that is greater or lower than the percentage specified in that subparagraph (i)(I) or subparagraph (ii)(I), as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(v)make an order that the percentage referred to in subparagraph (i) (II) or subparagraph (ii)(II) of section 485 (7) (a) shall be such a percentage, that is greater or lower than that percentage specified in that subparagraph (i)(II) or subparagraph (ii)(II), as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(vi) make an order either that subsection (8) of section 485 shall cease to be in operation on and from such day, or that the election referred to in paragraph (b) of that subsection, which that subsection enables a

qualifying person to make, shall not be exercisable save in such circumstances, as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

and any matter that is provided for in the preceding subparagraphs is referred to in section 485(3) as a 'modification'.

(b)Where an order under subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a) is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made unless a resolution approving of the draft has been passed by that House.

Section 485 TCA 1997, "*Covid Restrictions Support Scheme*" provides:

(1) In this section—

"applicable business restrictions provisions" shall be construed in the manner provided for in the definition of 'Covid restrictions period' in this subsection;

"business activity", in relation to a person carrying on a trade either solely or in partnership, means—

(a) where customers of the trade acquire goods or services from that person from one business premises, the activities of the trade, or

(b) where customers of the trade acquire goods or services from that person from more than one business premises, the activities of the trade relevant to each business premises,

and where customers of the trade acquire goods or services from that person other than through attending at a business premises, that portion of the trade which relates to transactions effected in that manner shall be deemed to relate to the business premises or, where there is more than one business premises, shall be apportioned between such business premises on a just and reasonable basis;

"business premises", in relation to a business activity, means a building or other similar fixed physical structure from which a business activity is ordinarily carried on;

"chargeable period" has the same meaning as in section 321 (2);

"claim period" means a Covid restrictions period, or a Covid restrictions extension period, as the context requires;

"Covid-19" has the same meaning as it has in the Emergency Measures in the Public Interest (Covid-19) Act 2020;

"Covid restrictions" means restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947, being restrictions for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

"Covid restrictions extension period" has the meaning assigned to it in subsection (2);

"Covid restrictions period", in relation to a relevant business activity carried on by a person, means a period for which the person is required by provisions of Covid restrictions to prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity is carried on (referred to in this section as 'applicable business restrictions provisions') and is a period which commences on the Covid restrictions period commencement date and ends on the Covid restrictions period end date;

"Covid restrictions period commencement date", in relation to a relevant business activity, means the later of—

(a) 13 October 2020, or

(b) the day on which applicable business restrictions provisions come into operation (not having been in operation on the day immediately preceding that day);

"Covid restrictions period end date", in relation to a relevant business activity, means the earlier of—

(a) the day which is three weeks after the Covid restrictions period commencement date,

(b) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(c)the day preceding the first day following the Covid restrictions period commencement date, on which the applicable business restrictions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in paragraph (b)), or

(d) 31 March 2021,

and, for the purposes of paragraph (c)—

(i)the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that paragraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations;

"partnership trade" has the same meaning as in section 1007;

"precedent partner", in relation to a partnership and a partnership trade, has the same meaning as in section 1007;

relevant business activity" has the meaning assigned to it in subsection (4);

"relevant geographical region" means a geographical location for which Covid restrictions are in operation;

"specified period" means the period commencing on 13 October 2020 and expiring on 31 March 2021;

"tax" means income tax or corporation tax;

"trade" means a trade any profits or gains arising from which is chargeable to tax under Case I of Schedule D.

(2) (a) Subject to subsection (8), where, in relation to a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions period, the period for which those restrictions continue to so apply is referred to in this section as a 'Covid restrictions extension period', which period commences on the foregoing day (referred to in this section as a 'Covid restrictions extension period commencement date') and ends on the Covid restrictions extension period end date.

(b)In this section, 'Covid restrictions extension period end date', in relation to a relevant business activity, means the earlier of—

(i) the day which is three weeks after the Covid restrictions extension period commencement date,

(ii) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(iii)the day preceding the first day, following the Covid restrictions extension period commencement date, on which the applicable business restrictions provisions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in subparagraph (ii)), or

(iv) 31 March 2021,

and, for the purposes of subparagraph (iii)—

(i)the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that subparagraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations.

(c) Where, in relation a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions extension period, the period for which those restrictions continue to so apply is also referred in this subsection as a 'Covid restrictions extension period' which period commences on the foregoing day and ends on the Covid restrictions extension period end date.

(3) The following provisions made in this section, namely:

(a) the reference in the definition of 'Covid restrictions' in subsection (1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

(b) the specification of 31 March 2021 in the definition of 'specified period' in subsection (1) as the date on which the period there referred to shall expire;

(C) the specification of 25 per cent in subsection (4) (b) (i);

(d)the specification of 10 per cent in subsection (7)(a)(i)(I) or (ii)(I);

(e) the specification of 5 per cent in subsection (7) (a) (i) (II) or (ii)(II);

(f) subsection (8) and the election referred to in paragraph (b) of it which a qualifying person is, by virtue of that subsection, enabled to make,

shall, together with any other provision of this section that the following modification relates to, be construed and operate subject to any modification that is provided for in an order made undersection 485(2)(a) and which is in force.

(4) (a) In this section—

"average weekly turnover from the established relevant business activity" means the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;

"average weekly turnover from the new relevant business activity", means the average weekly turnover of the person, carrying on the activity, in respect of the new relevant business activity in the period commencing on the date on which the person commenced the business activity and ending on 12 October 2020;

"established relevant business activity" means, in relation to a person, a relevant business activity commenced by that person before 26 December 2019;

"new relevant business activity" means, in relation to a person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020;

"relevant business activity", in relation to a person, means a business activity which is carried on by that person in a business premises located wholly in a relevant geographical region;

"relevant turnover amount" means—

(i) where a person carries on an established relevant business activity, an amount determined by the formula—

$$A \times B$$

where—

A is the average weekly turnover from the established relevant business activity, and

B is the total number of full weeks in the claim period, or

(ii) where a person carries on a new relevant business activity, an amount determined by the formula—

A x B

where—

A is the average weekly turnover from the new relevant business activity, and

B is the total number of full weeks that comprise the claim period.

(b) Subject to subsections (5) and (6), this section shall apply to a person who carries on a relevant business activity and who—

(i) in accordance with guidelines published by the Revenue Commissioners under subsection (22), demonstrates to the satisfaction of the Revenue Commissioners that, in the claim period, because of applicable business restrictions provisions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of the person is carried on—

(I) the relevant business activity of the person is temporarily suspended, or

(II) the relevant business activity of the person is disrupted,

such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount, and

(ii) satisfies the conditions specified in subsection (5),

(hereafter referred to in this section as a 'qualifying person').

(5) The conditions referred to in subsection (4) (b) (ii) are—

(a) the person has logged on to the online system of the Revenue Commissioners (in this section referred to as 'ROS') and applied on ROS to be registered as a person to whom this section applies and as part of that registration provides such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of registration and which particulars shall include those specified in subsection (14),

(b) for the claim period, the person completes an electronic claim form on ROS containing such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of determining the

claim and which particulars shall include those specified in subsection (14),

(c) for the claim period, the person makes a declaration to the Revenue Commissioners through ROS that the person satisfies the conditions in this section to be regarded as a qualifying person for that claim period,

(d) the person has complied with any obligations that apply to that person in respect of the registration for, and furnishing of returns relating to, value-added tax,

(e) the person is throughout the claim period eligible for a tax clearance certificate, within the meaning of section 1095, to be issued to the person, and

(f) the person would, but for the Covid restrictions, carry on the business activity, that is a relevant business activity, at the business premises in a relevant geographical region, and intends to carry on that activity when applicable business restrictions provisions cease to be in operation in relation to that relevant business activity.

(6) Where a relevant business activity of a qualifying person does not constitute a whole trade carried on by that person, then, for the purposes of determining whether the requirements in subsection (4)(b) (i) are met, the relevant business activity shall be treated as if it were a separate trade and the turnover of the whole trade shall be apportioned between the separate trade and the other part of the trade on a just and reasonable basis, and the amount of turnover attributed to the separate trade during the claim period shall not be less than the amount that would be attributed to the separate trade if it were carried on by a distinct and separate person engaged in that relevant business activity.

(7) Subject to subsections (10) and (11), on making a claim under this section, a qualifying person shall, in respect of each full week comprised within the claim period, be entitled to an amount equal to the lower of—

(a)(i) where the qualifying person carries on an established relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the average weekly turnover from the established relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the average weekly turnover from the established relevant business activity as exceeds €20,000,

Or

(iii) where the qualifying person carries on a new relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the person's average weekly turnover from the new relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the person's average weekly turnover from the new relevant business activity as exceeds €20,000,

and

(b) €5,000 per week,

and any amount payable under this section is referred to in this section as an 'advance credit for trading expenses'.

(8) (a) Where, in relation to a relevant business activity carried on by a person—

(i) applicable business restrictions provisions were in operation such that a qualifying person made a claim under this section in respect of a claim period and that claim, taken together with any claims made by the person immediately preceding that claim, is in respect of a continuous period of not less than three weeks, and

(ii) those applicable business restrictions provisions cease to be in operation, then, where that qualifying person, within a reasonable period of time from the date on which the applicable business restrictions provisions cease to be in operation, resumes or continues, as the case may be, supplying goods or services to customers from the business premises in which the qualifying person's relevant business activity is carried on, that qualifying person may make an election under paragraph (b).

(b) Where no part of the week immediately following the date on which the applicable business restrictions provisions ceased to be in operation in respect of a relevant business activity would otherwise form part of a Covid restrictions period or a Covid restrictions extension period, a qualifying person to whom paragraph (a) applies may elect to treat that week as a Covid restrictions extension period and may make a claim under this section in respect of that period.

(9) A claim made under this section in respect of an advance credit for trading expenses shall be made—

(a) subject to paragraph (b), no later than—

(i) eight weeks from the date on which the claim period, to which the claim relates, commences, or

(ii) if the date on which the qualifying person is registered as a person to whom this section applies (following an application which is made in accordance with subsection (5) (a) and within the period of eight weeks specified in subparagraph (i)) falls on a date subsequent to the expiry of the period of eight weeks so specified, three weeks from the date on which the person is so registered,

and

(b) in the case of a claim made under this section that is referred to in subsection (8), no later than eight weeks from the date on which the applicable business restrictions provisions concerned cease to be in operation.

(10) Where, for any week comprised within a claim period, a person is a qualifying person in relation to more than one relevant business activity carried on from the same business premises, and a claim is made in relation to each relevant business activity, the amount the qualifying person shall be entitled to claim under this section in respect of all of those relevant business activities for any weekly period shall not exceed the amount specified in subsection (7)(b) and subsection (7) shall apply with any necessary modifications to give effect to this subsection.

(11) (a)Where a relevant business activity in respect of which a person is a qualifying person is carried on as the whole or part of a partnership trade, then any claim made under this section for an advance credit for trading expenses in respect of the relevant business activity shall be made by the precedent partner on behalf of the partnership and each of the partners in that partnership and the maximum amount of any such claim made in respect of the relevant business activity in any weekly period shall not exceed the lower of the amounts specified in subsection (7)(a)(i) or (a)(ii), as the case may be.

(b)Where a claim is made under this section by a precedent partner for an advance credit for trading expenses in respect of a relevant business activity carried on as the whole or part of a partnership trade then—

(i) for the purposes of subsections (15) and (16), each partner shall be deemed to have claimed, in respect of that partner's several trade, a portion of the advance credit for trading expenses calculated as—

A x B

where—

A is the advance credit for trading expenses claimed by the precedent partner, and

B is the partnership percentage at the commencement of the claim period,

(ii) the precedent partner shall, in respect of each such claim, provide a statement to each partner in the partnership containing the following particulars—

(I) the partnership name and its business address,

(II) the amount of advance credit for trading expenses claimed by the precedent partner on behalf of the partnership and each partner,

(III) the profit percentage for each partner,

(IV) the portion of the advance credit for trading expenses allocated to each partner,

(V) the commencement and cessation date of the claim period, and

(VI) the chargeable period of the partnership trade in which the claim period commences,

(iii) for the purposes of subsections (17) and (18), references to a person making a claim shall be taken as references to the precedent partner making the claim on behalf of the partnership and each of its partners, and

(iv) for the purposes of subsection (19), section 1077E shall apply as if references to a person were references to each partner and the references to a claim were a reference to a claim deemed to have been made by each partner under subparagraph (i).

(12) Any reference to 'turnover' in this section means any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, except for any amount recognised as turnover in that particular period of time due to a change in accounting policy.

(13) Where a person makes a claim for an advance credit for trading expenses under this section, in computing the amount of the profits or gains of the trade, to which the relevant business activity relates, for the chargeable period in which the claim period commences, the amount of any disbursement or

expense which is allowable as a deduction, having regard to section 81, shall be reduced by the amount of the advance credit for trading expenses and the advance credit for trading expenses shall not otherwise be taken into account in computing the amount of the profits or gains of the trade for that chargeable period.

(14) (a)The particulars referred to in paragraphs (a) and (b) of subsection (5) are those particulars the Revenue Commissioners consider necessary and appropriate for the purposes of determining a claim made under this section, including—

(i) in relation to a qualifying person—

(I) name,

(II) address, including Eircode, and

(III) tax registration number,

and

(ii) in relation to a relevant business activity—

(I) name under which the business activity is carried on,

(II) a description of the business activity,

(III) address, including Eircode, of the business premises where the business activity is carried on,

(IV)where the business activity was commenced prior to 26 December 2019, the average weekly turnover of the qualifying person in respect of the business activity in the period commencing on 1 January 2019 and ending on 31 December 2019,

(V)where a trade is carried on in more than one business premises, the turnover of the qualifying person in respect of the business premises, to which the relevant business activity relates, in the period commencing on 1 January 2019 and ending on 31 December 2019,

(VI) where a business activity is a new relevant business activity, the date of commencement of the activity and the amount of turnover in respect of the new business activity beginning on the date of commencement and ending on 12 October 2020,

(VII) the average weekly turnover in respect of an established relevant business activity or a new relevant business activity, as the case may be,

(VIII) in respect of tax, within the meaning of section 2 of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clauses (IV) and (VI) the amount of tax that became due in accordance with section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010,

(IX)such other total income excluding the relevant business turnover in respect of the total tax returned in respect of section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clause (IV) or (VI),

(X) expected percentage reduction in turnover of the qualifying person in respect of the business activity in the claim period, and

(XI) such other particulars, as the Revenue Commissioners may require.

(b) Subsequent to receiving the information requested under this section, the Revenue Commissioners may seek further particulars or evidence for the purposes of determining the claim.

(15) Where a company makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the company has not repaid the amount as required by subsection (17)(a)(II)—

(a)the company shall be charged to tax under Case IV of Schedule D for the chargeable period in which the claim period commences, on an amount equal to 4 times so much of the amount under this section as was not so permitted to be made, and

(b) an amount chargeable to tax under this subsection shall be treated as income against which no loss, deficit, credit, expense or allowance may be set off, and shall not form part of the income of a company for the purposes of calculating a surcharge under section 440.

(16) (a)Where an individual makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by

this section to be made, and the individual has not repaid the amount as required by subsection (17)(a)(II), the individual shall be deemed to have received an amount of income equal to 5 times so much of the amount under this section as was not so permitted to be made (referred to in this subsection as the 'unauthorised amount').

(b)The unauthorised amount shall, notwithstanding any other provision of the Tax Acts, be deemed to be an amount of income, arising on the first day of the claim period that is chargeable to income tax under Case IV of Schedule D.

(c)Where the taxable income of an individual includes an amount pursuant to paragraph (b), the part of the taxable income equal to that amount shall be chargeable to income tax at the standard rate in force at the time of the payment of the advance credit for trading expenses but shall not—

(i) form part of the reckonable earnings chargeable to an amount of Pay Related Social Insurance Contributions under the Social Welfare Acts, and

(ii) be an amount on which a levy or charge is required, by or under Part 18D.

(d) Notwithstanding section 458 or any other provision of the Tax Acts, in calculating the tax payable (within the meaning of Part 41A) on the unauthorised amount under this subsection, there shall be allowed no deduction, relief, tax credit or reduction in tax.

(e)In applying section 188 or Chapter 2A of Part 15, no account shall be taken of any income deemed to arise under this subsection or any income tax payable on that income.

(17) (a) Where subsequent to a person making a claim under this section, it transpires that -

(i) the requirements in subsection (4) (b) are not met (and a claim in respect of which those requirements are not met is referred to hereafter in this subsection as an 'invalid claim'), or

(ii) the amount claimed exceeds the amount the person is entitled to claim under this section (and a claim to which this subparagraph applies is referred to hereafter in this subsection as an 'overclaim'),

then the person shall, without unreasonable delay—

(I) notify the Revenue Commissioners of the invalid claim or overclaim, as the case may be, and

(II) repay to the Revenue Commissioners—

(A) in respect of an invalid claim, the amount paid in respect of that claim,

(B) in respect of an overclaim, the amount by which the amount paid in respect of that claim exceeds the amount the person is entitled to claim (hereafter referred to in this section as the 'excess amount').

(b) Where a person makes a claim under this section in respect of a claim period and it subsequently transpires that the claim is an invalid claim or an overclaim, as the case may be—

(i) then, subject to subparagraph (ii), the amount of the advance credit for trading expenses paid by the Revenue Commissioners in respect of the invalid claim, or the amount of the advance credit for trading expenses overpaid by the Revenue Commissioners in respect of an overclaim, as the case may be, shall carry interest as determined in accordance with section 1080 (2) (c) as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, and

(ii)where the invalid claim or overclaim, as the case may be, was made neither deliberately nor carelessly (within the meaning of section 1077E) and the person complies with the requirements of paragraph (a)(II), the amount repaid to the Revenue Commissioners in respect of the invalid claim or overclaim, as the case may be, shall carry interest as determined in accordance with section 1080(2)(c) as if a reference to the date when the tax became due and payable were a reference to the date paragraph (a) is complied with.

(c) Paragraph (b) shall apply to tax payable on unauthorised amounts under subsections (15) and (16) as it applies to overpayments arising on invalid or overclaims.

(18) (a)For the purposes of this subsection, 'claim' and 'overpayment' shall have the same meanings respectively as they have in subsection (1) of section 960H.

(b)In this subsection, a claim period is a 'reduced claim period' where—

(i) in the case of a claim period which is a Covid restrictions period, the claim period ends on a date as provided for (in relation to that Covid restrictions period) by paragraph (c) of the

definition of 'Covid restrictions period end date' in subsection (1), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the date on which the applicable business restrictions provisions shall expire, and

(ii) in the case of a claim period which is a Covid restrictions extension period, the claim period ends on a date as provided for (in relation to that Covid restrictions extension period) by subsection (2) (b)(iii), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the date on which the applicable business restrictions provisions shall expire.

(c) Where a qualifying person makes an overclaim in respect of a reduced claim period, the Revenue Commissioners shall be entitled to recover the excess amount from the person in accordance with paragraph (d) where the following conditions are met:

(i) the claim is made before the end of the claim period; and

(ii)the claim is an overclaim solely by reason of the fact that the claim period is a reduced claim period.

(d)The Revenue Commissioners shall be entitled to recover the excess amount referred to in paragraph (c) by—

(i) setting the amount of an advance credit for trading expenses that the person is entitled to be paid in accordance with subsection (7) or (8) against the excess amount, or

(ii)where, after the end of the specified period, a repayment is due to the person in respect of a claim or overpayment, setting the amount of the repayment against the excess amount.

(e) Where the conditions referred to in paragraph (c) are met and the excess amount is recovered by the Revenue Commissioners in accordance with paragraph (d) within a reasonable period of time from the end of the specified period, the excess amount shall not be an unauthorised amount under subsection (15) or (16), as the case may be.

(f) Where the conditions referred to in paragraph (c) are met, the excess amount shall carry interest as determined in accordance with section

1080 (2) (c) as if the reference to the date when the tax became due and payable were a reference to the day after the day on which the specified period ends.

(19) Any claim made under this section shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E (11) or 1077E (12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to a claim in respect of a claim period made in connection with subsection (7).

(20) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—

(a)knowingly or wilfully delivers any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person, or

(b)knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return or statement, or knowingly or wilfully furnish any incorrect information in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person,

and

the provisions of subsections (3) to (10) of section 1078, and section 1079, shall, with any necessary modifications, apply for the purposes of this subsection as they apply for the purposes of offences in relation to tax within the meaning of section 1078.

(21) The administration of this section shall be under the care and management of the Revenue Commissioners and section 849 shall apply for this purpose with any necessary modifications as it applies in relation to tax within the meaning of that section.

(22) The Revenue Commissioners shall prepare and publish guidelines with respect to matters that are considered by them to be matters to which regard shall be had in determining whether—

(a)there are provisions of Covid restrictions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of a person is carried

on in a Covid restrictions period, or Covid restrictions extension period, as the case may be, and

(b)as a result of the provisions referred to in paragraph (a), the turnover of the person in respect of the relevant business activity in the Covid restrictions period, or Covid restrictions extension period, as the case may be, will not exceed an amount that is 25 per cent (or less) of the relevant turnover amount.

(23) Notwithstanding any obligations imposed on the Revenue Commissioners under section 851A or any other enactment in relation to the confidentiality of taxpayer information (within the meaning of that section), the details referred to in clauses (I) and (III) of subsection (14) (a) (ii) shall, for all persons to whom an advance credit for trading expenses has been paid by the Revenue Commissioners under this section, be published on the website of the Revenue Commissioners.

(24) (a) Where a Revenue officer determines that a person is not a qualifying person within the meaning of subsection (4) (b), the Revenue officer shall notify the person in writing accordingly.

(b)A person aggrieved by a determination under paragraph (a), may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date on the notice of the determination.

(c)Where the Appeal Commissioners determine that a person is a qualifying person within the meaning of subsection (4)(b), the 8 week period specified in subsection (9), shall commence in respect of such a person on the date that determination is issued.

(d)The reference to the Tax Acts in paragraph (a) of the definition of 'Acts' in section 949A shall be read as including a reference to this section.

Submissions

Appellant

34. The Appellant director submitted the denial of the CRSS payments by the Respondent was self-serving, flawed and based upon disingenuous grounds and as such the Respondent was "perhaps" deliberately guilty of misfeasance and prevarication.

35. The Appellant director stated that owing to the 5 kilometre travel restrictions which were imposed on all citizens and businesses who were deemed to be non-essential services which by definition included its business, it was not possible for him, his fellow director or the Appellant's staff to travel to the its premises. He stated that the administrator for ROS lived in [redacted] which was some 15km away from the Appellant's premises and as this was outside the radius of permitted travel for non-essential workers they could not retrieve the laptop with the ROS certificate (this is a security certificate which is provided by the Respondent and downloaded onto a computer or similar device so that the taxpayer can access the Respondent's services) on it. The Appellant director advised that owing to data protection and sensitive company information held on the laptop, the Appellant was reluctant for the laptop to be removed from its premises.

36. The Appellant director stated that he had concerns from a legislative point of view (specifically the provisions of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 which provided sanctions or fines for persons breaching lockdown provisions) in travelling to the Appellant's premises during the period of lockdown restrictions to retrieve the laptop and this is what prevented him from lodging the CRSS claim within the eight week period. The Appellant director stated that aside from possible sanctions which could have been imposed on him for breaching the legislative rules, he was also not minded to travel to the Appellant's premises as he had underlying health issues and did not wish to take any risks associated with travelling to those premises. This travel requirement was aggravated by the fact that the Appellant director's only means of travelling to the Appellant's premises was by public transport which by its nature in his view was unsafe owing to the widespread community transmission of Covid-19.

37. As such, the Appellant director submitted that the provisions of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 and the provisions of section 485(9) TCA 1997 created a glaring anomaly as the former legislation prohibited persons from leaving their residence while the latter legislation required a claim for CRSS payments to be made within the timeframe covered by those restrictions. As he was required to travel to the Appellant's premises to make the claim and as this was not possible, the Appellant director submitted that this is why the claim was not made within the permitted timeframe and as such, the Commission should allow the late claim.

38. The Appellant director referenced a number of publications, including a press release from the Taoiseach's Department dated 30th December 2020 which stated that effective from that date substantial restrictions were put in place. The Appellant director submitted that as these restrictions included the prohibition on travel to non-essential services, such as the business of a type operated by the Appellant, then this was conclusive evidence that neither he nor any of the Appellant's staff could travel to the Appellant's premises to access the computer and lodge the CRSS claim within the timeframe demanded under section 485 (9) TCA 1997.

39. The Appellant director submitted that this "glaring anomaly" was as a result of the understandable "rushed legislation" enacted by the Oireachtas and as such, the Commission should remedy the position. The Appellant director concluded his submissions by stating that common sense should prevail and the claim ought to be allowed by the Commission as to deny the Appellant payments due to it on a "technicality" was unjust and unfair.

Respondent

40. The Respondent's Counsel acknowledged that the Appellant's business was prohibited from opening during the periods under appeal and that it was entitled to CRSS payments for those periods subject to complying with the legislative requirements governing those payments.

41. The Respondent's Counsel stated that neither they nor the Commission enjoyed the jurisdiction to infer words into the legislation and as such both it and the Commission were required to implement the legislation as enacted by the Oireachtas without deviation or expansion.

42. Turning to the legislation, the Respondent's Counsel stated that in order for a payment to be paid under the CRSS the Appellant was required to submit a claim within a timeframe of eight weeks from the date on which the claim arose. The Respondent's Counsel submitted that as the Appellant had no so done, then eligibility for the periods under appeal must be denied to the Appellant.

43. The Respondent's Counsel submitted that the provisions of section 485 (9) (a) (1) TCA 1997 which provide the criteria for submitting a claim was not a discretionary provision of the TCA 1997 owing to the inclusion of the word "shall" in those provisions. The Respondents Counsel submitted that as the legislation required the Appellant to have made the claim within the eight week period and as there was no discretion within the provision then the Appellant's claim could not succeed.

44. Counsel for the Respondent submitted that not alone was the legislation succulently clear in relation to the time period but guidelines which were published by the Respondent on 23rd October 2020 entitled "CRSS guidelines" [**Appendix 1**] at page 11 of those guidelines also stated:

> *"A claim may be made through ROS as early as the beginning of the claim period (see Section 5.2 for guidance on the term "claim period") and no later than 8 weeks from the date on which the claim period commences*."

45. The Respondent's Counsel acknowledged that an eligible claim for CRSS payments was required to be submitted via the ROS system and that the Appellant did not originally have access to this system at the time their claim arose. However, Counsel for the Respondent advised that in excess of 67,000 new ROS certificates were issued for the period 28th December 2020 to 21st March 2021 and as such he was unsure why the Appellant choose not to have a replacement certificate issued to the appropriate staff member responsible for bookkeeping or separately why the Appellant's accountant (who the Respondent had received correspondence from) did not submit the claim within the required timeframe. Counsel for the Respondent referred to an extract from the Respondent's website which detailed the procedure necessary to get a new ROS certificate which he said was clear and straightforward and as such intensified the mystery as to why the Appellant did not seek a replacement ROS certificate. The Respondent's counsel submitted that had any member of the Appellant's staff applied for a replacement ROS certificate which they could have installed on any laptop or similar device within their home then this would not only have assisted the Appellant's staff not having to travel to its premises but would also have enabled the claim to have been submitted from the comfort of their own home.

46. The Respondent's Counsel advised that a VAT return was filed on behalf of the Appellant on ROS on 9th February 2021 and as such he was at a loss to understand how the Appellant could arrange to file a VAT return during the period it claimed it was unable to access ROS.

47. In summation, the Respondent submitted that the Appellant was required to submit a claim for CRSS payments within a period of eight weeks and as it had not so done, the Commission were required under the strict confines of the legislation to dismiss the appeal.

Material Facts

48. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent:

    48.1.1 The Appellant operated a business of a type which was prohibited from operating during the periods of the CRSS claim.

    48.1.2 The Appellant received CRSS payments pre and post the claim periods which are the subject of this appeal.

    48.1.3 Those periods relate to the timeframe 20th December 2020 to 21st March 2021 inclusive.

    48.1.4 Subject to complying with the legislative requirements, the Appellant was entitled to receive CRSS payments for those periods.

    48.1.5 The Respondent did not receive a claim from the Appellant for CRSS supports for the period 20th December 2020 to 21st March 2021 until 20th May 2021.

    48.1.6 A VAT return was filed by or on behalf of the Appellant on 9th February 2021.

49. In addition, the Commissioner found the following facts which are required eligibility conditions for inclusion in the CRSS:

    49.1.1 They Appellant carried on business activities after the "Covid-19 restrictions" were lifted.

    49.1.2 The Appellant had complied with all their VAT registration and return obligations.

    49.1.3 The Appellant held a tax clearance certificate at all material times.

    49.1.4 The Appellant's business was operated from a business premises.

Analysis

50. The Appellant adopted the view during the appeal that sections 484 and 485 TCA 1997 were rushed into the law, contained flaws and that those sections were not operated within the spirit of the law. As such, the Appellant submitted that it was being denied eligibility owing to a technicality which was both unjust and unfair.

51. Before embarking on exploration of the substantive issue, owing to the Appellant's views the Commissioner deems it desirable that an understanding is provided of the jurisdiction and scope of the Commission.

52. The jurisdiction of the Commission was considered by the Court of Appeal in the recent seminal case of *Lee v Revenue Commissioners* [2021] IECA 18 *("Lee")*. In *Lee,* it was held that the Commission are a "creature" of statue and so must live by statue and as such the Commission's functions are limited to those expressly conferred by the TCA 1997.

53. Those functions are substantially set out in the provisions of section 940 to 949 TCA 1997 and in summation provide that the function of the Commission is to adjudicate, hear and determine appeals against decisions and determinations of the Respondent regarding taxes and duties. In so doing the Commission are required to apply the law as enacted by the Oireachtas without deviation or expansion. It follows that the Commission do not have the power to insert words into the legislation and must in fulfilling its functions operate within the strict confines of the legislation.

54. As it is not in dispute that the Appellant was entitled to avail of CRSS for the periods under appeal (subject to satisfying the requisite criteria), this leaves the net issue to be determined by the Commissioner as to whether the claim submitted by the Appellant on 20th May 2021 is a valid claim.

55. In order to so do, regard must be had by the Commissioner to the provisions of section 485 (9) TCA 1997 which sets out the legislative basis for a valid claim. It states "*A claim made under this section in respect of an advance credit for trading expenses* ***shall*** *[*emphasis added*] be made…no later than … eight weeks from the date on which the claim period, to which the claim relates".*

56. As that provision is clear and unambiguous the Commissioner rejects the Appellant's proposition that the provision is flawed in any respect. Put simply, it states that for a valid claim to exist, the Appellant must have submitted the claim within a period of 8 weeks subsequent to the period to which it relates. The use of the word "shall" in that section mandates that there is no discretion conferred on the Commissioner to deviate from that wording and the requirements contained within the provision.

57. As the Appellant submitted its claim for the period under appeal being 20th December 2020 to 21st March 2021 on 20th May 2021, it did not fulfil the statutory requirement to submit the claim within the specified period of eight weeks. Thus at face value, the appeal must fail and the claim be denied.

58. However, the Appellant raised additional submissions which must be considered by the Commissioner. In the first instance, the Appellant submits that to deny it the claim is unfair and unjust. While Charlton J. held in *Mennolly Homes v Appeal*

Commissioner & anor. [2010] IEHC 49 *("Mennolly)"* that "*revenue law has no equity*" and while observations on legislation is outside the remit of the Commission, the Commissioner is not satisfied that the Appellant's submission is an accurate portrayal of the factual position.

59. It appears to the Commissioner that the Appellant in its own correspondence of 16th November 2020 acknowledged that it was required to submit a valid claim within a period of eight weeks. While being aware of this requirement and despite reminders to submit a valid claim by the Respondent throughout December 2020, it was not until 20th May 2021 that the Appellant submitted their valid claim.

60. It is also of note that the Appellant had received CRSS payments prior to the period under appeal, for the periods 26th October 2020 to 13th December 2020 and managed to submit those claims within the stipulated timeframe. This indicates to the Commissioner that the Appellant's accountant submitted those claims and was properly set up to do so (as the Appellant did not have its own ROS certificate at that time) and as no evidence was presented to the Commission as to why the accountant did not submit the claim for the period under appeal this confirms that the Appellant could have submitted its claim within the permitted timeframe but for reasons unknown choose not to.

61. Leaving aside the above and the void in correspondence between the Appellant and the Respondent during January and May 2021, the Appellant submits that the delay in making the claim arose owing to conflicting laws which prohibited it from making a valid claim. However, Counsel for the Respondent advised that the Appellant submitted a VAT return on ROS in February 2021 at a time which the Appellant submitted that it was unable to access the ROS system and as this was not contested by the Appellant, it is fatal to the Appellant's submission.

62. It is also not accepted by the Commissioner that in order to submit a valid claim, the Appellant was required to breach the provisions of Criminal Justice (Enforcement Powers) (Covid-19) Act 2020. In the first instance, any one of the Appellant's staff could have contacted the Respondent to explain the position and have requested that a new ROS certificate be provided to it so that it could submit its CRSS claim. Rather than adopt this course of action it appears that the Appellant instead choose to have remained moot.

63. In the alternative, the Appellant could have requested its accountant to have submitted the claim on its behalf but failed to do so. In this regard, it is of note that unlike the Appellant's business the services of accountants were considered

"essential services" under section 10 (b) Part 2 of S.I. 701/2020 – Health Act 1947 (section 31A – Temporary Restrictions) (Covid 19) (No. 10) Regulations 2020 **[Appendix 2]** and in order to assist businesses akin to the Appellant's were permitted to trade during the periods under appeal.

64. The burden of proof lies with the Appellant. As confirmed in *Mennolly Homes*, the burden of proof is, as in all taxation appeals, on the taxpayer. The Commissioner finds that the Appellant has not discharged the burden of proof in this appeal and finds that the Appellant has not shown that they were entitled to avail of the CRSS payments for the periods 20th December 2020 to 21st March 2021.

Determination

65. For the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in demonstrating its eligibility for inclusion in the CRSS for the periods 20th December 2020 to 21st March 2021.

66. It is understandable that the Appellant and its director may be disappointed with the outcome of his appeal but the Commissioner has no discretion to deviate from the legislation. The Appellant was correct to avail of its right of appeal and to check its legal entitlements.

67. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997

Andrew Feighery
Appeal Commissioner
12th October 2022

The Tax Appeals Commission has been requested 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.