



# The Irish Accounting & Tax Summit 2020

## Session 8 Top Tax Appeals in 2020



### Presenter:

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## Topical Tax Appeal Cases - 2020

- Welcome to Your Webevent
- Introducing the Webevent Team
- Your Downloads and Material
- Your Questions
  - During the session
  - At the end of the session

## Topical Tax Appeal Cases - 2020

- Webevent Timing - 12:30 – 13:30
- Teaching Space – 50 Minutes
- Questions and Answers – 10 Minutes

## Topical Tax Appeal Cases

### Overview

- A review of tax appeal determinations;
- Recommended reading for practitioners – Why?

## Tax Appeal Cases – Professional Close Co. Surcharge

- Case 108TACD2020 – Close Co. Professional Surcharge – Accountancy practice
- Not sure if will go to courts
- Unfairness of the regime here.
- Section 441(2) principal part of income from carrying on professional activity/professional services to connected person/company;
- Work done – audit, financial accounts, bookkeeping, vat, Special work – share valuation;
- Determined wholly or mainly based on turnover here;

## Tax Appeal Cases – Professional Close Co. Surcharge

- Case 108TACD2020 – Close Co. Professional Surcharge – Accountancy practice
- Claiming small portion of fee for professional activity (75% BK vs 25% audit);
- Accountant claimed – anything up to TB stage was not professional as done by junior staff – Special work – non-professional (294k);
  - Maxse case- business owner – journalist and magazine editor – Can break down constituent parts
- Revenue – Can't split the accounts work/audit into professional & non prof – all integral to preparing accounts done by professional (team element)

## Tax Appeal Cases

- Case 108TACD2020 – Close Co. Professional Surcharge – Accountancy practice
- Accepted book-keeping if separate is not a profession however if part of other service then it is – Uses ICAI practicing cert requirements,
- Revenue – product being provided is accounts – bookkeeping is just part of this- However accepted – if bookkeeping is contracted for separately as a discreet service, provided for and billed separately – then not a profession
- Lessons to learn – invoicing separately and often for book-keeping/ separate book-keeping Co. charging customers directly, watch wording on invoices ‘Professional advise’ – risky approach if going down route that this client did;



## Tax Appeal Cases

- Case 108TACD2020 – Close Co. Professional Surcharge – Accountancy practice
- Finding – AC found in favour of revenue – If preparing accounts then all aspects are professional here (regulated professional activity);
  - Data input is bookkeeping & mgt accs – non-professional;
  - Payroll is non-professional;
  - Staff time regardless of level in prep of FS's is profession
  - Staff time regardless of level in prep of audit file is profession
  - Special assignment - professional

## Tax Appeal Cases

- Case 126TACD2020 – VAT on medical Services
- Schedule 1 VATCA – List of exempt supplies – includes the provision of medical services
- Doctor incorporated and supplied services to GP practices and out of hours service providers. The out of hours service provider was an association between GPs that arranged for the provision of locums to GP practices to provide holiday or sick leave cover and to provide out of hours services to patients
- Co. contributed to part insurance for employee of Co.

## Case 126TACD2020 – VAT on medical Services

- Doctor saw patients, diagnosed etc. with very little involvement from association;
- When look to whether exemption applies – the legal form of the person providing is not important – Co. can still provide exempt services (Kugler case)
  - Must be provided by person with necessary qualifications;
  - Consistent with reducing cost of medical services;
  - Fiscal neutrality – prevents persons providing same activities being treated differently
- Revenue argued supplying staff – VAT applies – as not supplying services to the final customer (only to the association who is TP's customer)
- Contented association medical director had control over the Doctor & admin services etc.
- Contended the service by Doctors Co. was separate and distinct from Association charging final customer. Invoices raised to Assoc and amounts did not agree with what Assoc charged to final customer

## Case 126TACD2020 – VAT on medical Services

- Appeal commissioner found in favour of TP as:
- Legal form does not matter;
- You look to the transaction overall when looking at exemption;
- TP provided medical services to end patients – the fact that Assoc provided admin, finance, infrastructure, handbooks guidelines – Not relevant;
- No Direction of management, supervision and control of medicine advise to patients held by Assoc
- Fact that Co. part paid Professional indemnity Insurance helped (as not required to do this if was just provision of staff).
- Revenue not correct- As the law sought to reduce cost of medical care – revenue’s contention was contrary to this
- Felt in fact Assoc could more be seen as an agency as opposed to Co.
- Revenue has put a case to High Court – Watch this space
- **Revenue updated guidance** – a locum doctor providing cover to GP practices is considered the provision of staff by Revenue

## Case 72TACD2020 – PAYE/PRSI

- Proprietary director own Co. who went through successful examinership & debts written off;
- Subsequently revenue did audit where unpaid PAYE paid to revenue–
  - Tried to assess Individual on part of the unpaid PAYE – S.997A – reduce the PAYE paid credit to recover taxes;
  - Asserted undeclared salary for Director (Director stated these were repayment on directors loans) & tried to make director personally liable
- Tax payer – said examinership trumped Section 997A & additional salary was not salary but repayment of directors loans
- Lesson - Always document repayment of directors loan
- AC found in favour of Tax payer
  - The forgiveness of PAYE debt at time of examinership took away ability for revenue to claim against director & as part of Companies Act – clear that all liabilities including contingent were forgiven
  - No basis to invoke Section 997A(3)(4) as they forgave it as part of examinership;
  - Can't raise assessment for extra salary for reason above

## Case 69TACD2020 – PAYE/PRSI

- Proprietary director – Co. went into examinership
- Examiner appointed to help Co. survive – but no seller went into liquidation
- While in examinership PAYE/PRSI liabilities unpaid even though Person requested to be;
- While in liquidation – No funds to pay PAYE/PRSI
- Wages paid but the PAYE/PRSI & USC not paid over to revenue on employee salary but did pay over on own salary.
- Revenue disallowed the credit for tax paid in the Directors Form 11 as they reallocated PAYE paid to other employees –S997A(4) refers;
- Liquidator did not look for restriction
- Finding: No credit to be given in form 11 as deemed not paid over – S.997A(4) is clear – assessment stands

## Case 124TACD2020 – Books & records

- Key Point - Always have books & records to prove case
- Revenue audit – Pub business – Applied a mark up & assessed for under declaration of sales & VAT on same as well as understated income tax;
- TP – not satisfied that mark up took account of wastage, free beer etc.
- No till rolls or ‘z’ reads maintained – no records of waste maintained;
- AC finding – assessment stands – Burden on proof for TP to prove revenues calc was incorrect – Not done – required S84 VATCA 2010 and Regulation 27 of the VAT Regulations 2010 to maintain records

## Case 62TACD2020 – Books & records

- Key Point - Always have books & records to prove case
- Revenue audit – Retail business – Looked at margins in 2 years & assessed for under declaration of sales and related VAT & deemed this amount to be paid as salary;
- No records of the number of individual sales per day, the amount paid on individual sales per day or the individual products sold to customers
- Employee – no salary during the period
- Revenue raised assessment based on mark up of 105% & TP not happy –
- Burden of Proof placed on TP
- AC finding - reduce mark up to 98% & adjusted PAYE/PRSI as a result



## Case 68TACD2020 – Requirement for VAT reclaim

- Case 68TACD2020 – VAT – Right to entitlement to €451k in VAT – Disallowed due to fraudulent trading & not doing enough homework
- Petrol business - contracted with third party – paid someone other than the supplier – invoiced by one party and paid another party
- AC – found in favour of revenue – Ought to have known he was involved in a fraudulent transaction.
- Lesson – Always be aware of fraud and show procedures taken to ensure legitimate business

## Case 68TACD2020 – Stamp duty

- **Lesson – Wording in documents is so important**
- S.46 SDCA – Sub-sale arrangements;
- Mr X purchased property – 23 days later trust deed done stating it is held in trust for Mr Y.
- A number of years later New Nominee created to hold For Y;
- No mention in first contract about holding in trust
- Revenue held Stamp duty payable on First transfer as not the same party to second contract;
- AC Finding – In favour of revenue – stamp duty payable
- Gone to the High Court

## Tax Appeal Cases

- Case 63TACD2020 – Case for payment arrangements and reduction in Chargeable gain; PPR
- Also asked for time to pay;
- No great back up for enhancement expenditure but allowed it based on evidence;
- Interesting the way they determined cost here – 20% deposit required when purchased
- Case 66TACD2020 – Pension payment – Employee – Form 11 – Payment not made by return deadline;
  - TP claimed the advise from revenue over the phone was that she did not need this
  - Held in favour of revenue – S.787 has the word ‘shall’
  - Remember – Advise over the phone is not GOOD advise.

## Tax appeal cases

- Case 09TACD2020 – Provision of emergency accommodation – Case V vs Case I
- Revenue contended case I – TP – Case V as claiming S.23 relief (relates to tax year 2010 & 2011)
- Prior to 2008 submitted income as Case I
- Stringent rules in place that landlord must abide by – provision of staff, cleaning, opening hours, take staff when requested, TP had office on premises, contacted directly re bookings etc.
- AP found that it was trading – as TP had control of property and provided significant services – Local Authority never had control of property
  - Ran property under strict rules entered into with DCC (usually landlord would set the rules).
- Useful refresher for trade versus Rental

## Tax appeal cases

- Case 88TACD2020 – Development land & CGT
- Revenue contended that the sale of the department store & land was development land under S.648 as the sales price was > current use value
- TP claimed it was not development land as current use value was equal to purchase price;
- Brochure for sale suggested development potential;
- No valuation report produced by TP only arguing with revenues valuation;
- Also TP argued 4 year limit applied (however did not mention this in notice of appeal in 2014) – S949I
- AC Finding – Held it was development land – Implications??? & grounds for 4 year limit had no merit – In any event revenue could go > 4 years as return in 2007 was not a true and full disclosure of material facts (irrelevant if these errors were done by agent)

## Tax Appeal Cases

- Case 03TACD2020 – Vat refunds four year rule & dual use inputs
- TP reviewed affairs & noted certain taxable activities were being performed.
- TP submitted amended Vat refund on 30/12/13 for Nov-Dec 09
- Included elements of vat inputs relating to pre this period for Jan-Sept 09 period on basis that it is was an adjustment to apportionment of dual use inputs
- Revenue disallowed claim for Jan-Sept 09 as not within 4 years – S.99 VATCA
- AC held in order for there to be apportionment – must be claimed and apportioned in taxable periods in 2009 – not done as required by S.61 & 59 VATCA. Required to be done in taxable period as period it becomes chargeable
- Clarified that repayment of VAT must be made in writing within 4 years of taxable period to which it relates

## Tax Appeal Cases

- Case 04TACD2020 – Prize money to an author – Taxable or non – taxable;
- AC held – Case I – taxable as Irish law interpretation differed from UK legislation
  - Look at
    - Payment in excess of salary;
    - Personal equation;
    - Expectation;
    - Contractual obligation or voluntarily
    - Exceptionality

## Tax Appeal Cases

- Case 17TACD2020 – Claim for incapacitated child Tax credit – Claim made in 2015- accepted & relief given back to 2011.
  - TP claimed should go back to date of birth – 2003
  - AP agreed with revenue – 4 year rule – S.865(4) ‘Shall’ no discretion
  - Similar result in Case 81, 80, 82, 83, 84, 85 & 01TACD2020 & 70TACD2019



## Tax Appeal Cases

- Case 13TACD2020 – Claim for damages to be treated as remuneration –
- TP claimed S.192A applied to exempt the payment from tax for damages
- Revenue stated S.192A(5) applied as was remuneration for past
- AC held in favour of revenue due to wording and basis for calculation related to loss of earnings classed as Special Damages – Separate part was for Personal damage

## Tax appeal cases

- Case 06TACD2020 – Set off of DIRT deducted against nursing home fees paid
- TP 65 or over (S.267 TCA applied) claimed Medical expenses relief on nursing home fees & requested the expenses be set against the amount of interest subject to DIRT as opposed to other income.
- AC found in favour of TP as nothing to prevent this allocation
  - Legislation did not disallow it so can look at interpretation in favour of tax payer
- Assess if you have any clients in this area.

- 23TACD2018 – Employed versus self employed
  - Previous Social welfare determined these were class S – Tax payer was making this case;
  - Umbrella Contract versus mini contracts – Revenue argued that there was one over arching contract but there was mini contracts within it
    - When substitute driver got – then a new contract between Co. and Substitute driver
  - Looked at Substitution, control, opportunity to profit, integration, Enterprise test, bargaining power.
  - Mutuality of obligation:
    - Maybe not in ‘overall contract context’, but did exist in weekly contract once availability confirmed
    - Being able to substitute was not the same as being able to ‘opt out’ etc.
  - AC found in favour of revenue and upheld decision.
  - Has been put forward to the High Court
  - If using a sole trader try at least once in the year to get the sole trader to subcontract out the work to another party – Construction contracts
- Disappointing – May have far reaching impact;
- However, Judge did acknowledge that trades persons were a little different here;
- Look at your client base and see if this has an impact

- 17TACD2018 – Section 604 - PPR
  - Bought house in 2003 and sold in Dec 2004
  - House in need of serious repair
  - TP argued that he moved in while renovating it and it was ‘his home’
  - Revenue challenged his occupation - and his intention
  - Revenue argued S.640 – land dealing business
  - Utility bills, food bills, used to living in hard conditions, ‘eat Pizza deliveries’
  - Revenue – looked at loan agreement - showed for trading purposes and was short term
  - Revenue won and income tax applied

# Conclusion

- Tax appeals determinations well worth reading;
- As part of training for the office.

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