



The CPD Fest 2020

A Review of Topical 2020 Tax Appeal Cases

Presenter:

John Murphy - OmniPro

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The slide features the OMNI PRO logo and tagline in the top left, and the website address "www.omnipro.ie" in the top right. The main title "Topical Tax Appeal Cases - 2020" is centered in bold black text. Below the title is a bulleted list of topics: "Welcome to Your Webevent", "Introducing the Webevent Team", "Your Downloads and Material", and "Your Questions", with the last item having two sub-points: "During the session" and "At the end of the session". The slide has a white background with a blue border.

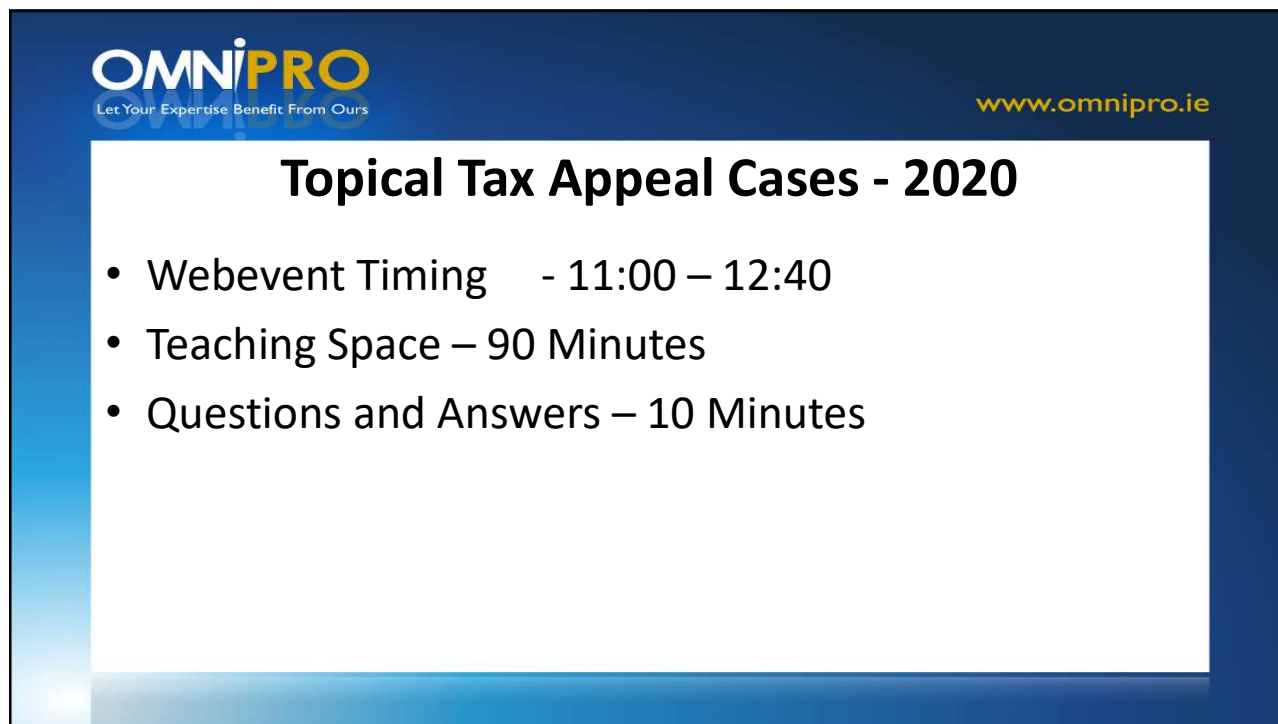
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Topical Tax Appeal Cases - 2020

- Welcome to Your Webevent
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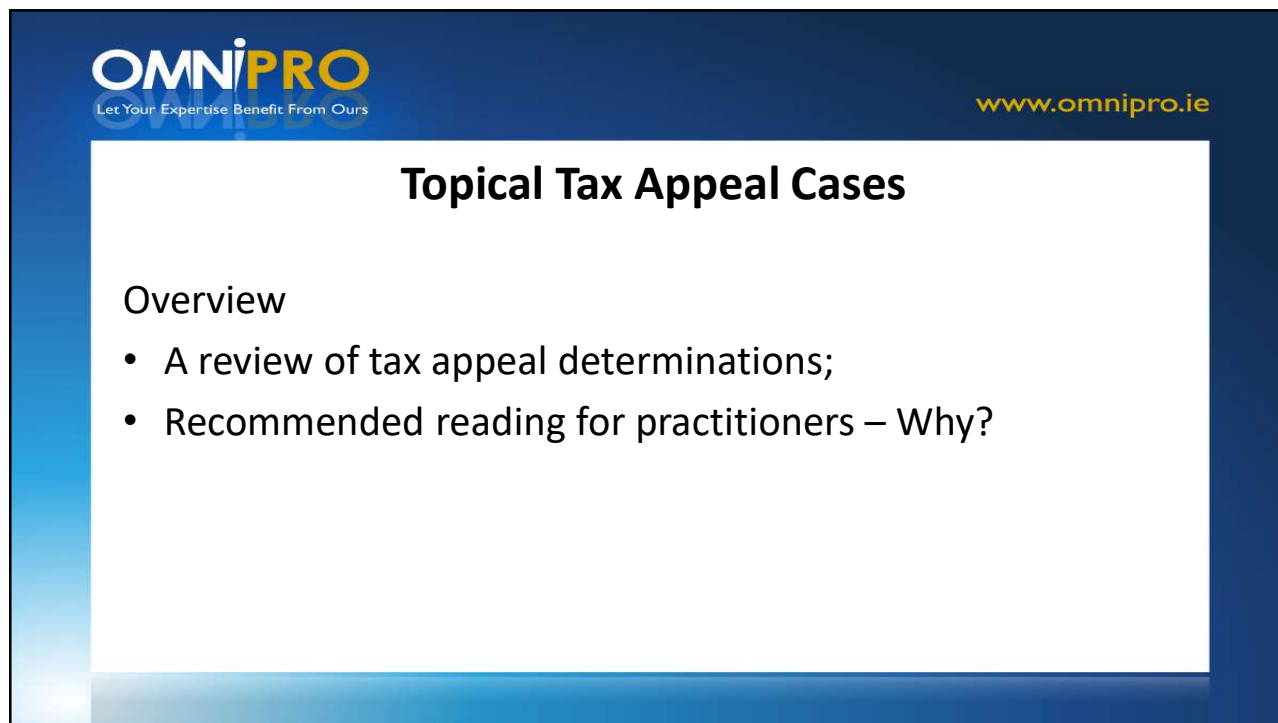
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Topical Tax Appeal Cases - 2020

- Webevent Timing - 11:00 – 12:40
- Teaching Space – 90 Minutes
- Questions and Answers – 10 Minutes

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Topical Tax Appeal Cases

Overview

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

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129TACD2020 - Close Co. Surcharge

- 129TACD2020 – Section 434(3A) Election
- Lesson – Make sure S.434(3A) is on CT Completion/quality control checklist
- Dividend received – No election made;
- No voluntary disclosure made – Revenue subsequently did not allow amended return as audit had commenced
- TP contended not a distribution as set against investment
- Tried to amend return but not permitted – Claim incomplete return so can amend
- New S.959V(7) since 2012 here – Cannot amend return once revenue audit started
- AC found in favour of revenue
- Surcharge of 26k payable as a result of admin error

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170TACD2020 – Medical Expense Claims

- Case 170TACD – Claim for medical expense relief for 2014,2015, 2016 against the 2018 tax return
- Could not claim relief in earlier years as no tax
- AC Found – in favour of revenue as S.469 wording is clear it must be claimed in the year it arises and max of claim is amount that brings that to nil
- Lesson – remind clients to see if some items can be put off to following year where tax does arise.

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145TACD2020 – Termination payments

- Payment to spouse on death of her spouse by Employer paid as tax free termination payment under S.123 & S.201(2)(a) TCA
- Revenue initially saying it was a distribution but changed mind prior to hearing;
- Case concerned accrual for termination payment – Revenue stated deduction not allowed under Section 81 TCA until it is paid as not 'wholly & exclusively';
- Revenue questioned motive – to provide financial support to spouse
- AC – Found in favour of tax payer – deduction allowed as Spouse had worked there for 44 years
- Lesson – If making such a payment have a basis for the payment so as to prevent issues & make it clear in the letter that it is for years of service.
 - Watch deferring payment – it is not prevented but revenue may challenge it (relief given based on payment made (does not state when it must be made)

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Retirement relief

- 140TACD2020 – Section 599/598 TCA
- Transfer of land to son and parents claimed S.599 TCA
- Within 6 yrs son disposed of it – clawback
- TP claimed S.598 TCA to prevent clawback & utilise threshold
- Revenue disagreed & wanted tax;
- AC found – no requirement to claim S.598 relief but was requirement to claim S.599 TCA
- Although claimed the box ticked was transfers between families if not their then S.598 TCA applies
- AC found in favour of tax payer – If S.599 did not apply then it falls to S.598 TCA as S.599 does not disapply S.598
- Double edged sword however
- Lesson – Be aware of this ability to prevent clawbacks but be mindful that it could inadvertently result in clawbacks

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130TACD2020- Rental property

- 130TACD2020 – Deduction for motor expenses for rental property & S.23 clawback
- As property transferred from 1 spouse to other within 10 years of first let – clawback – S.372AP(7)
- Allowance permitted for mileage between properties but trying to claim civil service rates (S.97(2) TCA)
- As no records then deduction for insurance, road tax, repairs and maintenance of car not allowed
- AC – Cannot claim Civil service rates & as no records can't claim above costs – Clawback arises;
- Reminder – Consider if you have clients in this area where mileage can be claimed with regard the direct cost of travelling there.

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172TACD2020 – Right to Subscribe for shares

- Whether right to subscribe for shares is to be included in trade receipts
- Farmer –member of Co-op – Under rule of Co-op right to subscribe for shares at par
- Revenue – assessed market value of shares as being income of trade TP decided
 - Is the right to subscribe arising from supplying milk or being a member – found to be as a result of supplying milk –so trade related
 - If it is trade, is there a value – Found no value as only a right to subscribe – could not be sold, transferred assigned – was personal – not marketable – No value
 - The paying for the shares and the taking up of the option were capital in nature & not trading (the Co-Op rule to subscribe & the subsequent allocation were separate from the right to subscribe).
- Gone to High court

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Case 108TACD2020 – 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;

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Case 108TACD2020 – 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)

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Case 108TACD2020 – Professional Close Co. Surcharge

- 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;

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Case 108TACD2020 – Professional Close Co. Surcharge

- 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

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153TACD2020 – Payment for defamation??

- Appellant received €180k in compromise settlement with Employer due to dispute
- ER taxed the benefit under PAYE under S.123 TCA as it was a payment in connection with termination of employment
- Appellant tried to reclaim PAYE as determined S.192A TCA applied to exempt payment as it related to damages for defamation
- AC found – Not exempt as wording in legal agreement made it clear no party accept defamation claim
- Case has been stated to high court.
- Lesson to learn – If person is looking for defamation watch wording in legal documentation

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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

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156TACD2020 – Base cost following surrender of life interest

- Father in will – gave life interest in land to spouse and remainder to Child on death in 1996;
- In 2001 – spouse gave up life interest;
- In 2018 – some land sold – used market value in 2001 as base cost & subsequently tried to claim retirement relief by concession as spouse was sick and so land had to be rented out
- Revenue contended – base cost is 1996/date of death value & Retirement relief did not apply
- AC found in favour tax payer re base cost was 2001 (S.576 deems property to be disposed of by trustees and reacquired at market value on the property becoming settled. S.547/549 then imposes market value)
 - but retirement relief not available.

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Case 126TACD2020 – Vat on Medical Services

- 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.

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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

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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

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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

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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

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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

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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

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148TACD2020 – Books and records

- Lesson - Importance of books and records
- Appellant was an artist and florist;
- Revenue audit – claimed understatement of IT liability due to understatement of sales;
- Revenue looked at Bank statements and applied a set margin to come to Case I profit
- Revenue claimed for VAT due to income threshold exceeded;
- Burden of proof of tax payer – no books and records;
- AC – reassessed figures for stock of books, wedding sales and tax payable on this reduced amt.
 - As reduced turnover – No vat liability payable.

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Case 135TACD2020 – Emoluments or Not?

- Case 135TACD2020 – whether certain payments to directors and employees of a Motor Assessor Co (in liquidation since 2016) were emoluments or not / issues re BIK and ER PRSI.
- Mileage payments to a Director and other Employee 2015 + 2016
- Car purchase for a Director
- Lawnmower purchase for a Director – Asset of Company?
- BIK re use of company car by Director
- Employers Liability – re-grossing of tax due on mileage payments, car purchase and lawnmower purchase

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Case 135TACD2020 – Emoluments or Not?

- Liquidator – issues re the notification of audit by Revenue, location where audit was conducted, removal of records by Revenue from Director of Company after going into liquidation and the making of the assessments
- Appeals Commissioner – declined to consider this argument
- Burden of Proof lies with appellant (taxpayer) in this case as the person with access to facts and documents relating to their tax affairs. If cannot demonstrate Revenue assessment is incorrect – then it stands

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Case 135TACD2020 – Emoluments or Not?

- Appellant – did not succeed in discharging burden of proof re liability to BIK being payable
- No re-grossing of emoluments paid/deemed to be paid - as s986A provisions only in since 1 Jan 2018. (ref to a 2013 case which appellant could not obtain).
- Motor car and Lawnmower not emoluments paid to Directors. Company Assets - **BIK on private use to be agreed between parties.**
- Net travel expenses paid to EE – not an emolument. No additional PAYE/PRSI/USC due
- ER liability to be amended re other determinations above.

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Case 67TACD2020 – 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

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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 – POINT OF NOTE
- 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.

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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, 24 hour cover, access to rooms 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) – no landlord/tenant relationship.
- Useful refresher for trade versus Rental;
- Lesson – If you are trying to get to a trade – maybe

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Tax appeal cases

- Case 92TACD2020- Meaning of main residence (relevant for other purposes also)
- Relates to LPT but concepts can be helpful for CGT etc.
- LPT exemption for property purchased in 2013
- Withdrawn if sold or no longer “sole or main residence”
- Appellant moved to USA in March 2014
- Appellant claimed Irish house remained “main residence”
- Revenue raised assessment as felt not its main residence;
- AC found: Answer to Q not based on time spent only but other factors (is it the most NB to the person is the question) – Found in favour of taxpayer
 - Not entitled to residence in USA
 - Regarded himself as temporarily abroad
 - Visited property when he could
 - Kept property vacant
 - Maintained property

Key point - Useful case if trying to support main residence argument

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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)
- **Lesson – Always consider is the price the current use price? & S.643 prevents losses forward being utilised**

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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.

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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

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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

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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 etc. etc.

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21TAXD2020 – Income Tax

- Tax payer won – can’t insert a negative PAYE credit to reclaim tax under paid for PAYE worker (S.986 TCA – recovery of underpayment of taxes & S.10 TCA – tax credits/cut offs)
 - S.10 & 3 TCA only covers personal & general tax credits but not ‘full credits’ = income which TP already paid
 - That said 2010 assessment for €848 still collectable.

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Conclusion

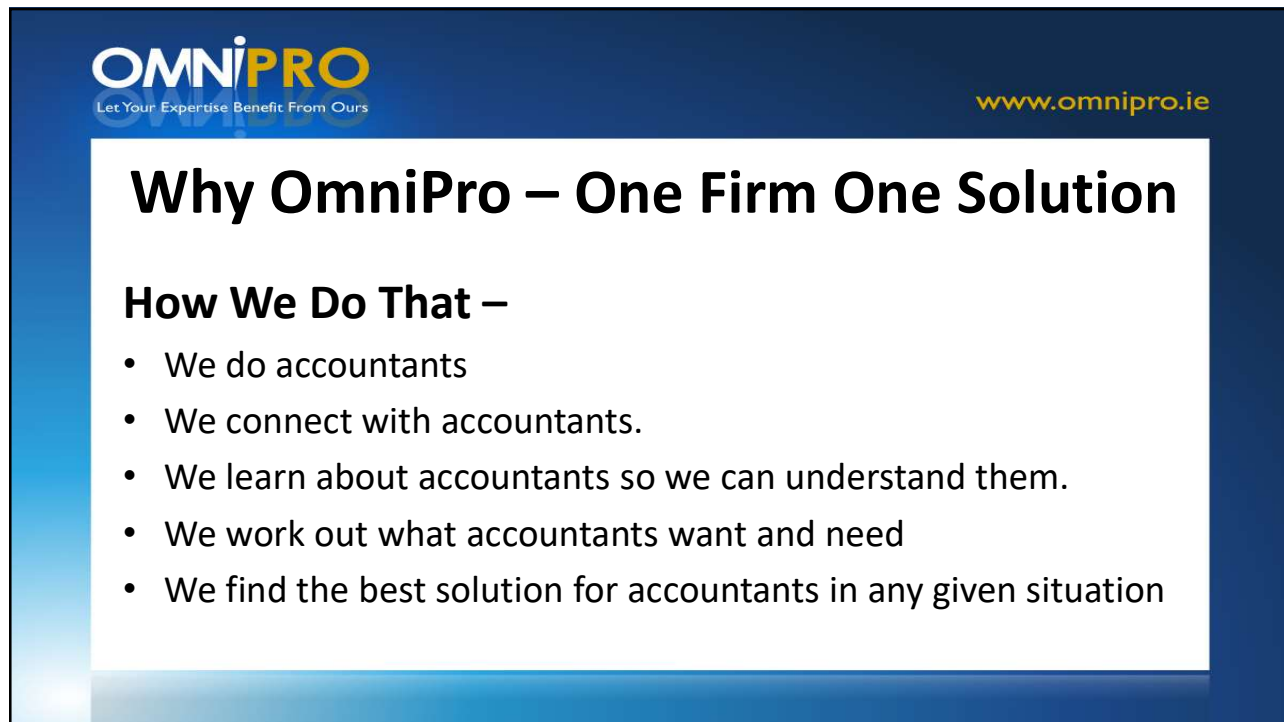
- Tax appeals determinations well worth reading;
- As part of training for the office.

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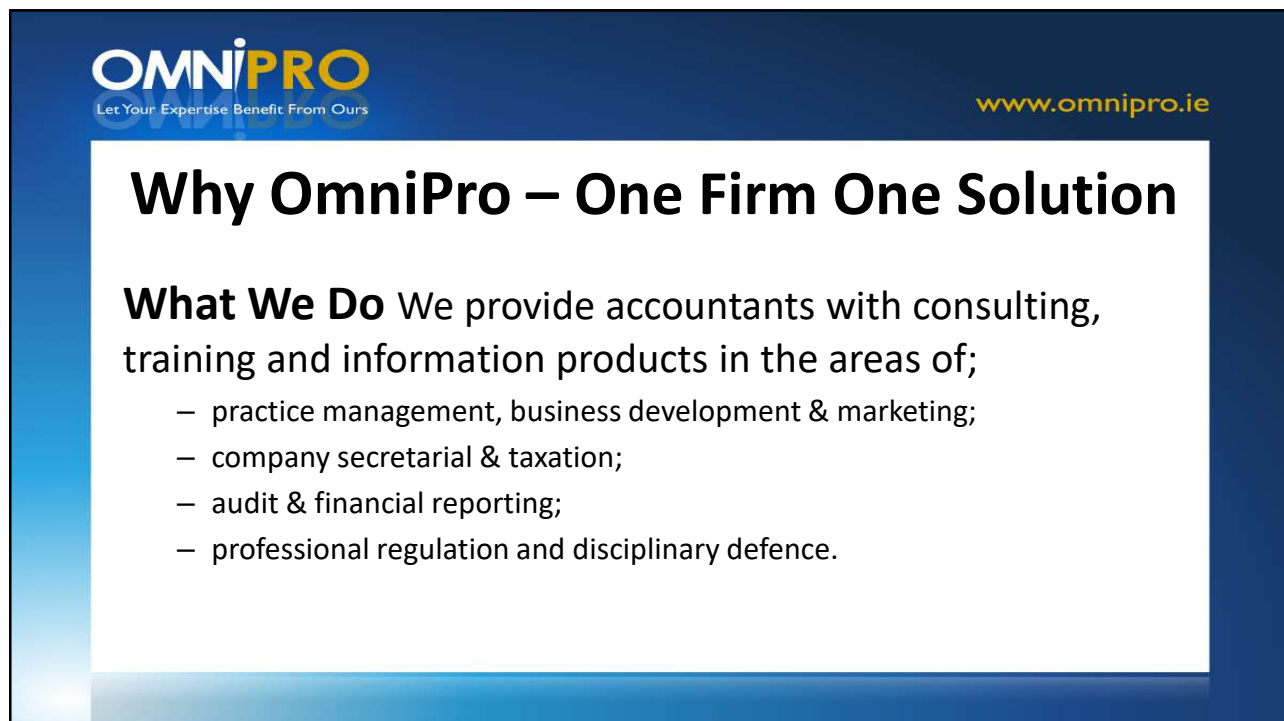
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