



The CPD Fest 2020

A Review of Topical 2020 Tax Appeal Cases

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Topical Tax Cases - 2020

(Recent Tax Decisions and other issues)



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Topical Tax Cases:

- The 4-year Rules – Continues to arise so quick mention
- Professional Service Companies – Accounting v Book-keeping
- Employee v Self-employed – Dual Contracts – legitimate Substitution etc
- Importance of Records –Obligation to keep – Onus of Proof etc
- Nature of Income / Payments – What is actually happening v supposed to happen
- Anti-Avoidance – Aggressive, passive etc
- Game-changers – developments in interpreting taxes
- Sundry other Cases / Issues – VAT, CGT, Domicile Levy, Rental Costs, etc
- Q & A

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Topical Tax Issues cont..:

- AC = Appeal Commissioner
- UK FTT = First Tier Tribunal
- UK FTT(UT) – Upper Tier Tribunal
- CJEU = European Court of Justice
- Caution – summaries of summaries = crude over-simplifications etc
- Speaker’s experience/opinion v Tax Law v Practice
- Reality v Summary v Subjective Narrative



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Ignored Cases:

- Numerous cases about the Artists Exemption – worth reading but not worth covering here
- Few cases which might not have ‘wider application’ (involving P21s where tax-payer upset because social welfare lead to liability and Revenue or Employer should have taken the correct tax so ‘not my fault’ etc)
- All VRT cases



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Concessions & Guidance

- 24TACD2020 - below
 - No Loss of Revenue – TAC confirmed concessions N/A for Appeals

- 25TACD2019
 - Case involved Split-year Treatment – Appellant argued Revenue's application of concession was 'unfair and inconsistent' - TAC cannot rule on fairness or otherwise of non-statutory concession

- UK Case Aozara GMAC v HMRA
 - Company had relied on published HRMC guidance but UK Court of Appeal rejected 'legitimate expectation' argument - Guidance merely 'HMRC's opinion' and not law.



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Concessions & Guidance

- Arderin Distillery case
 - Assured by Revenue that Alcohol Products Tax would not apply as importing alcohol to make hand sanitiser for Covid etc. Later application was denied so Revenue sought VAT – awaiting High Court

- To use the Revenue's own words – echoed in many TAC and other cases

“The Respondent argues that it is well established that any publication by the Revenue Commissioners is not a proper aid to statutory interpretation and rather the legislation is to be interpreted in accordance with the generally accepted principles of statutory interpretation of tax statutes”

- Be wary of guidance, assurances and advance opinions



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The '4-year rules'

(Refunds v Assessments)



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The 4-year time Limits:

- Numerous 2016, 2017, 2018 & 2019 cases
 - 2020 circa 20 more – final clearance of back-log? Technical cases to follow?
- No exceptions to S.865 <> Plenty of Exceptions to S.959AA
- Unfairness highlighted previously, e.g. NPPR & OAP cases
 - There is no 'Hardship clause' so unless actual legislation changes.....
- Revenue's ability to circumvent 4-year obstacle? The Droog Case <> The Stanley Case – restrictions on ability to make enquiries etc.

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S.865(4):

- A claim for repayment of taxSHALL NOT be allowed unless it is made....within 4 years ..after the end of the chargeable period.

S.959AA:

- Where Return ⁽¹⁾ has been submitted and ⁽²⁾ it's a full and true disclosure of all material facts necessary for the making of an assessment....an assessment shall not be made after the end of the 4 years ..of the chargeable period in which the Return is delivered (=> extra year on 865) **.unless**....correct an error, correct a mistake of fact, Return was not 'full & true'..to take account of subsequent events..etc etc

(See 88TACD2020 below)

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The 4-year time limits cont..... Sample cases

- 70TACD 2020
 - Refunds for 2011 and 2012 claimed in 2017 – Revenue refused to issue.
 - Had moved to Australia in 2013 – local advisors had let him down
 - ⇒ No Refund – S.865 etc
- 01TACD 2020
 - Returns 2012 – 2016 submitted in 2017 - Revenue refused to issue 2012 refund.
 - Didn't know about 4-year rule and delays caused as looking after sick parents
 - ⇒ No Refund – S.865 etc

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The 4-year time limits cont..... IT and CGT

- 105TACD 2020

- Appellant filed both an Income Tax Return and a CGT Return for 2012 in 2017
- Income tax refund denied because of S.865, CGT assessed with 10% surcharge
- Appellant had been Proprietary Director so strictly 'self-assessed'
- Had made Med.1 claims as well – on time – but as no Return then 'not valid'

⇒ No Refunds – CGT was payable - Appeal dismissed – Not claimed within 4 years etc

- Self-assessed so why not argue that S.959AA(2) applied?

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The 4-year time limits cont..... Sample Cases

- 155TACD 2020

- Appellant filed RCT30 in December 2007 paying €9k in RCT.
- In 2012 he realised this was an error and filed a revised €Nil Return
- Revenue refused to issue refund as > 4 years
- Appellant argued this was not strictly a 'payment of tax' as not actually due etc

⇒ No Refund – S.865 etc

- See Also 80TACD2020, 81TACD2020, 82TACD2020, 83TACD2020, 84TACD2020, 85TACD2020, 86TACD2020, 95TACD2020, 96TACD2020, 103TACD2020, 132TACD2020, 138TACD2020, 139 TACD2020, 151TACD2020, 158TACD2020, 163TACD2020, 181TACD2020

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The 4-year time limits cont..... **HARDSHIP Arguments cont....**

- **78TACD 2020**

- 2012 Return submitted in 2017 showing €8k+ refund – Revenue refused to issue.
- Appellant had Brain Injury on foot of previous accident
- ⇒ No Refund – S.865 etc

- **17TACD 2020**

- Incapacitated Child Credit – claimed 2015 for child born in 2003
- Condition difficult to diagnose until child is aged 8-11 so earlier claim impossible
- Revenue refused pre-2011 claims as > 4 years
- ⇒ No Refund – S.865 etc



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The 4-year time limits cont..... **TECHNICAL ARGUMENTS**

- **69TACD 2019**

- Claim for Top-Slicing-Relief for 2008 submitted in October 2009.
- Revenue sent back 2018 Return in March 2010 as still missing information.
- Return submitted in November 2016 – assessment issued showing refund
- Revenue refused to issue refund as > 4 years and S.865 etc
- Appellant argued that S.86 only required 'a claim' to be made within 4 years – a 'valid claim' is also required but this requirement is not limited by 4 years

⇒ No Refund – S.865 etc

- Interesting argument – start of real technical attack on S.865 ? Better than 'hardship' arguments
- Didn't think the TAC adequately dealt with the technical argument
- See past cases where Revenue had all relevant details but still denied as not contained in Return etc



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The 4-year time limits cont..... TECHNICAL ARGUMENTS

- 03TACD 2020
 - Business had non-Irish customers – He assumed no VAT on Sales mean no entitlement to input credits - In 2013 he found out he could claim inputs
 - Nov-Dec 2009 VAT Return submitted December 2013
 - Revenue reviewed claim and allowed Nov-Dec items but not pre Nov 2009 items
 - Argued that claim was for 'Review Period' so all 2009 should be allowed
 - VAT regulations re. 'dual use apportionments' allowed review etc

 - This regulations held to be non-relevant to this case – but interesting argument
- ⇒ No Refunds for pre Nov 2009 – S.99(4) does not allow same



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The 4-year time limits cont..... TECHNICAL ARGUMENTS

- 169TACD 2020
 - Appeal against refusal to issue refund for 2012 Return submitted in 2017
 - Revenue Acts are effectively part of the Constitution of Ireland
 - The Constitution is effectively a 'social contract'
 - Acts allow Revenue collect past 4 years but not to refund past 4 years
 - These are 'unfair contract terms' and unenforceable via EU regulations
 - TAC noted this argument outside its Jurisdiction so ignored
- ⇒ **No Refunds as S.865 etc**



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The 4-year time limits cont..... Estate Case

- 95TACD 2020

- Mother died in February 2016
- Revenue sought details of income from 2002 to 2016
- Refunds due for 2010, 2011, 2012, and 2013 – not issued as > 4 years etc
- Appellant argued 'holistic view' should be taken to cover 2002 – 2016 as one
- Revenue relief on S.865

⇒ No Refunds – Appeal dismissed – Not claimed within 4 years etc

- Note it was Revenue that opened the door – why is S.865 and not S.959AA
- S.959AA(2) – tax can be paid OR REPAYED notwithstanding S.865????
- There were a few other Estate cases - Maybe not the best example as technically not an 'amended assessment' but....

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4- Year Rules etc.....:

- Summary

- Revenue v Taxpayer – injustice between 4-year regimes - accept it.
- Change may be possible via legislation – UK model for 'hardship' cases?
- Self-assessment = ALWAYS Taxpayer's responsibility (Practitioners role / risk)
- Possible argument re. S.959AA(2) – never tested or argued?

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Professional Service Companies



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Accountancy v Professional Close Company Surcharge

- 108TACD2020
 - Previously a partnership, incorporated in 2011 – members of ICAI
 - 25 Staff – 9 qualified, 16 unqualified
 - Company has NOT paid Professional Close Company Surcharge
 - Basis - > 50% of its income was 'non-professional'
 - Revenue raised assessments for 2012 and 2013 to collect Prof. CCS
 - Note Assessments also included 10% Late Submission Surcharge!

⇒ Assessments upheld – Was liable to the Prof. CCS

- > 50% of income was from 'professional service activities'

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Accountancy v Prof. CCS - 108TACD2020 cont...

- S.441(1) defines 'service company' – business '*consists of or includes*' the carrying on of a profession or the provision of professional services
- S.441(2) then deems a company not to be a 'service company' if 'the principal part' of its income is NOT derived from carrying on a professional service or providing professional services.
- Both sides agreed core facts – only debate was what was and was not a 'professional service'.
 - Was a Close Company and was an Accountancy firm and were ICAI members
 - Was involved in providing both professional and non-professional services
 - Allocated based on Gross Fees and Timesheet hours (recorded as opposed to billed)

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Accountancy v Prof. CCS - 108TACD2020 cont...

- Routine Activities:

	Non-Qualified		← Juniors Seniors Managers etc →		
Appellant	Non-Professional		???? ???? Professional		
Revenue	Non-Professional		Professional		
	Bookkeeping	Management	File-Prep	Financial Statements	
	PAYE/VAT Compliance	Accounts	Trial Balance	Statutory Audit	
	Payroll			Tax Consultancy	

- Ultimately TAC held that you could not disassociate the work done by the Juniors from the overall purpose – preparing the Audit file is part of the audit process etc
- Once those hours were relocated then > 50% was 'professional'

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Accountancy v Prof. CCS - 108TACD2020 cont...

- Also 2012 had 'once-off assignment'
 - €294k fees included €50k unsolicited payment for 'Job well-done'
 - Linked to redemption and engaged to provide valuation and other
 - Argued not linked to 'professional work'
 - Even if it was - €50k was not for any 'service'
- TAC held it was professional as linked to their role as auditors and it was complex etc
- TAC included €50k as income so also now 'professional income'



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Accountancy v Prof. CCS - 108TACD2020 cont...

- What Now?
 - Important to read case and explore arguments
 - Note the role played by ICAI Guidance to members
 - Something not professional 'in itself' may be if part of package
 - Would result be any different if fees had been compartmentalised?
 - Separate Company for book-keeping only clients? – invoicing who?
 - Total fees for bookkeeping clients and non-bookkeeping clients.
- Any practice not paying Prof. CCS needs to review this case



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Employee v Self-Employed



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Contract of Services V Contract for Services cont..:

- 23TACD2018 – The HotFood Case
 - Covered at length last year
 - Case involved Pizza delivery drivers – own cars but Domino Logos
 - Weekly Roster – Driver confirmed availability in advance
 - Could swap shifts with other ‘registered drivers’
 - Managers controlled logistics of deliveries, fixed per-drop payment etc
 - Held to be Employers – Appealed to High Court
- Karshan (Midlands) Ltd T/A DOMINOS v REVENUE
 - High Court Decision delivered 20th December 2019
 - No reason to over-turn TAC Decision

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Contract of Services V Contract for Services cont.: **DOMINOS case continued...**

- **Karshan (Midlands) Ltd T/A DOMINOS v REVENUE**
 - In January Judge agreed Dominos did not have to pay costs
 - Domino's argued the usual 'loser pays' rule shouldn't apply as 'new issues'
 - Basically this was first Irish case on the 'gig economy'
 - Revenue argued the case 'was not a public interest case in any way shape or form' and merely involved business looking after its own interest.
 - Core argument in the HC was that TAC had 'gone against' Irish law in applying UK case law etc – Judge disagreed saying TAC merely "recognised the necessity to adapt to modern means of engaging workers"
 - => Judge felt the case was important in helping others understand the law

- Unclear if case is being appealed further

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Contract of Services V Contract for Services cont.: **DOMINOS case continued...**

- **DOMINOS v REVENUE - Take-aways from the case? (Pun Intended)**
 - Umbrella Contracts don't need Mutuality of Obligation – Hybrid agreements etc
 - Substitution must be genuine – Domino's paid the Sub, Sub had to be pre-approved
 - Integration – role was part of and not simply ancillary to Domino's core business
 - Actual Contract – not important unless they favour Revenue's argument

- **Watch this Space**
 - Disconnect between Public Sector / PLCs and Irish Businesses (This is a Franchise)
 - Substitution may be key to future defence cases

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Importance of proper Books & Records



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Books & Records cont..:

- 24TACD2019
 - X had a bread-delivery round – bakery self-raised invoices for him
 - He employed part-time assistants and operated PAYE during 2008-2012
 - Assumed 'basic' tax credits etc for employees – no formal TDCs
 - Never accounted for VAT on his 'commission' from bakery
 - Revenue raised assessments for VAT and PAYE
 - X argued "no loss of revenue" – Bakery reclaims VAT, employees owed no tax etc
 - "No Loss" argument irrelevant as not legislation but concession
- ⇒ VAT and PAYE/PRSI Assessments correct and tax owed
 - Also dispute re Car sale and hobby v Case I which Appellant won
 - Highlights risk of relying on concessions

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Books & Records cont.:

• 38TACD2019

- Appellant was PAYE tax-payer who dealt with Form 12s.
- When dealing with 2016 Return, decided to make pension payment of €23k.
- Pension payment made in October 2017 with intention to claim in 2016.
- However 2016 Return not actually submitted until December 2017.
- Revenue denied pension relief as not claimed 'by return filing date'

⇒ Assessment correct as not a 'valid claim'

- Can still claim Pension in 2017 – just can't back-date the claim
- See also 66TACD2020 for similar case – AVC paid in October 2016 and claimed in 2015 but Form 12 not submitted until December so Revenue refused – interesting because it had transcripts of her calls with Revenue over MyAccount issues

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Books & Records cont.:

• 62TACD2020

- Appeal involved undeclared sales and wages in Men's clothes Shop
- Revenue raised assessments based on estimates as 'insufficient records' kept
- Appellant kept manual daily cash book, manual stock book etc
- Revenue used samples of items for sale in the shop to estimate mark-ups
- Usual arguments about discount sales, obsolete stock, etc
- Revenue assumed missing sales were 'paid' to Mr. X and thus PAYE also due
- TAC reminded Appellant that onus is on them to prove etc
- TAC allowed a smaller mark-up% but did agree that there was undisclosed sales
- However TAC did not feel Revenue had proved payment of wages

⇒ VAT reduced but was payable – PAYE dismissed

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Books & Records cont..:

- 124TACD2020 – Pub Sales

- Revenue Audit of Pub lead to revised Sales figure and IT and VAT assessments
- No Till Receipts retained by Publican so Revenue used Mark-up Analysis
- Publican argued he has right to presumption of honesty
- Also argued Revenue failed to include Wastage, Free-Drinks, etc
- Case has been internally reviewed and Revenue had offered compromise
- TAC reminded Appellant that they had obligation to retain proper records
- TAC noted even now no Till receipts produced to support Appellant's case

⇒ Appeal denied – Assessments stand

- Pubs must record wastage and free drinks and promotions etc

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Books & Records cont..:

- 148TACD2020

- Revenue audited a florist and issued revised income tax and VAT assessments
- Revenue based their estimates on various documents and estimates
- Revenue's revised sales were > VAT limit so they also applied VAT
- Appellant did not have proper records (he had estimated €500 income in 2014).
- Also arguments over book sales and 'unpaid v paid' work elsewhere
- TAC accepted sales were understated but allowed some adjustments
- Revised turnover only €69k so not VAT

⇒ TAC revised Case I figures but additional tax was payable

⇒ VAT appeal upheld as turnover < registration limits

- Profits €44k v €500!

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Books & Records cont..:

• **63TACD2020**

- An anomaly in tax – possibly reflecting compassion and understanding!!
- Appellant sold house in 2004 - not disclosed - Revenue Intervention
- Her agent's submitted CGT computation based almost entirely on estimates
- At the hearing she argued even against her own agent's submissions
- Dispute also included occupation period for PPRR
- Revenue then revised CGT assessment during the Appeal Process
 - Proceeds reduced from €300k to €275k
 - Cost increased from £50k to £62,500
 - Enhancements €50k even though no proof

⇒ TAC approved assessment being reduced to Revenue's new figures



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Nature of Income / Gains V Nature of Payments

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Gift v Bonus:

- 29TACD2019

- Gift of > €2m to CEO – but important to note all management team got gifts
- Paid by shareholders following successful IPO Launch
- Issues re. timing of promise v timing of payment, calculation of the gift amount, etc
- Also paid by companies so can there be ‘personal emotions’ like gratitude
- PWC expert witness re. inclusion in Accounts etc
- **Wing v O’ Connell** – gift to winning Jockey case – critical to decision
- TAC concluded emoluments and thus taxable

⇒ Emoluments and taxable as income and not CAT

- Case to be restated in the High Court –
- You would be surprised how often this comes up in practice.



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Prize – Exempt or Taxable:

- 04TACD2020

- Author won International Prize for his book - Revenue sought to tax it as income
- Author had Artist Exemption but his other income fully utilised cap so S.195 N/A here
- Sole issue was whether monetary prize was ‘income of his profession’ or not
- Appellant referenced UK cases to support argument that it was exempt
- TAC agreed Irish and UK law were the same and it may be exempt in the UK
- However Irish law governed by Wing v O’ Connell – gift to winning Jockey case
- Therefore Prize was linked to his activity as an Author and that’s taxable

⇒ Prize monies taxable as Case II Income

- Important example of how Irish and UK position may differ even when law is the same!



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Ex-gratia Payment on Death:

- 145TACD2020
 - Payment by Company to spouse of Deceased Director - €200k
 - Deceased was a founding member with 54+ years of service
 - Case concerned only with allowability for CT - 'wholly and exclusively' etc
 - Not actually paid in lump sum form – would be paid 'as she needed it'
 - Revenue regard this as a 'distribution' and not a S.123 termination payment
 - TAC noted that Revenue kept changing their position which was unhelpful
 - TAC noted importance of letter sent to the Widow confirming the payment was in recognition of her husband's long service etc
- ⇒ Appeal Upheld – CT deduction allowed

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Termination Package – Compensation v Termination: S.192A

- 12TACD2020
 - Employee made bullying complaints which lead to investigations etc
 - Settlement Agreement signed wherein Employee got €65k (and €10k towards costs)
 - Employee claimed exemption via S.192A
 - Revenue dismissed as not an 'Out-of-Court' settlement – just a termination package
 - TAC agreed – context not as important as actual settlement agreement
 - Payment was Termination Payment and NOT compensation for bullying etc
- ⇒ Assessments stand and S.192A Exemption NOT available
- Agreement made it clear no admission of breach etc

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Settlement Package – Compensation v Termination:S.192A

- 13TACD2020

- Employee sued Employer and Settlement Agreement reached
- Settlement included 'Damages for personal injury' and 'Special Damages'
- Revenue taxed the 'Special Damages' - these were "in lieu of salary"
- Appellant argued that Loss of Earnings were merely a calculation method
- Compensation for not being able to work is not a substitute for future salary etc
- TAC agreed with Revenue using Appellant's original labels and workings
- Special Compensation was in effect 'loss of earnings' and taxed via S.123

⇒ Assessments stand and S.192A Exemption NOT available

- Label of 'Special Damages' was important – General Damages tend to be linked to non-pecuniary loss like pain and suffering. Special Damages tend to be for pecuniary loss and the agreement referred 'loss of earnings'



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S.192A Compensation v S.123 Remuneration:

- 153TACD2020

- Appellant worked for firm of Solicitors but left following 'compromise agreement'
- He received €180,000 to cover everything including 'damages'
- Revenue set 'damages' at €80k – Appellant argued €125k initially and €150k at TAC
- Damages were for '*defamation and victimisation*' and '*injury to reputation*'
- Problem was agreement included clauses like
 - Both sides 'withdraw all allegations'
 - Strictly 'without admissions of guilt'

⇒S.192A did not apply – Taxed via S.123

- Appellant sought case be sent to High Court



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Rental Income v Case I Trading – Emergency Accommodation:

- 09TACD2020

- Appellant made property available to Dublin CC for Emergency Accommodation
- Treated as Rent and claimed S.23 relief against the income
- Revenue denied S.23 and argued income was Case I Trading income!!
- Appellant had treated it as Case I for 2001 – 2007, then converted to Case V for 2008 – 2012 – no explanation for change other than he stopped using Accountants
- Agreement with DCC imposed various duties upon the Appellant
- Was not a Lease so not “Rent” – Appellant dealt with day-to-day running etc
- Providing accommodation rather than renting property so was Case I

⇒ Assessments stand and Case I correct

- Case reviews case law in this area so worth reading for this alone
- Restated for High Court

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CGT – Development Land or Not?

- 88TACD2020

- Shopping Complex sold for > €40m in 2007 – Gain reduced by losses
- Revenue argued S.648 sale of development land so no loss relief
- Raised assessment for €5m+ in 2014 which was appealed
- Dispute was whether or not €40m represented CUV
 - Appellant had local Valuer who did not provide formal valuation - Revenue used Dublin firm who did
 - Appellant's Accountant told Revenue there was no sales brochure but there had been
 - Sales brochure consistent with sale of 'development opportunity' – knock and replace etc
 - New owners submitted planning for new development in 2008
- TAC accepted Revenue's Expert and – with some adjustments – CGT stood

⇒ TAC Agreed with Revenue but CGT to be reduced to reflect minor issues

- Also a dispute assessment being > 4 years. Not allowed to argue as raised too late, but TAC dismissed this anyway - S.955 could not apply as Return was not a 'full and true disclosure of all relevant facts' etc

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Commercial Farming v Losses:

• 33TACD2019

- Shop-assistant and part-time farmer – farm losses 2007 to 2014
- Revenue disallowed losses from 2010 to 2014 so he appealed
- S.662 – no S.381 claim if (i) not commercial or (ii) losses for last 3 years
- Farmer argued S.662 cannot overrule S.381 – Wrong!
- Farmer argued that 3-year rule only disallowed every 4th year of loss – Wrong!
- However Farmer also outlined detailed history explaining context including records showing plan, costs linked to this plan etc.
- TAC allowed losses as ‘exceptional circumstances’

⇒ Losses allowed so Appeal upheld

- Note ‘exceptional circumstances’ so don’t over-reach



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Bank Case – Losses on Receiver Activities

• 22TACD2020

- Can bank set trading losses against Rental Profits collected by its Receivers?
- Revenue said no as ‘it is not the bank’s Rental Income’
- S.96(3) – not for the first time – at the heart of the confusions
- Receiver responsible for tax but based on owner’s circumstances etc
- TAC observed that this confusion exists but that’s for another day
- Rental activities are not ‘the banks activities’ so

⇒ Assessments upheld – no offset allowable

- Case to be restated for High Court

- How much longer will this Receivership lacuna be allowed to continue??



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Anti-Avoidance

(Actual and Deemed)



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Immediate v Principal Employer – Responsibility for Payroll

- 120TACD2020
 - Too complicated to properly explore but an important case
 - Appellant was assessed for unpaid PAYE as the 'Principal Employer'
 - Employees worked for CL and CL and Appellant had service agreement
 - Linked to 80+ employees in a Nursing Home
 - Appellant argued that CL was employer so Revenue should chase them
 - Revenue argued Appellant was actual employer – it managed the staff, it paid the wages, etc etc
- ⇒ Revenue Won – Appeal Dismissed
 - Case being re-stated for High Court
 - Worth reading for anyone with 'Payroll companies' etc

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Kittel Case - 68TACD2020

- Appellant had 2 Garages and shops and trading since 2002
- Entered into supply arrangement with Sales Rep for B Ltd from 2010 – 2012
- B Ltd claimed to have deal with C Ltd which allowed them to get cheaper fuel
- Had never heard of B Ltd but knew C Ltd to be reputable
- Appellant dealt with B Ltd but paid C Ltd – later this changed and dealt with C Ltd
- Turns out C Ltd was not 'the real C Ltd'
- Revenue raised assessments for €451k VAT linked to inputs on these supplies
- See case for arguments re. Kittel and Mobilix cases
- TAC noted triangular nature and 'lack of curiosity' in her decision to side with Revenue

⇒ Assessments upheld - VAT was payable

(Fraud was the 'only reasonable explanation'? Trader 'should have known'?)

- Case to be restated for High Court

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Deemed Distribution – Raymond Hughes v Revenue

- High Court Decision 29th November 2019
- Husband & Wife owns Old Co
- New Co was formed with 'A' shares and ordinary shares
- Old Co paid €2m for ordinary shares – H & W bought 'A' Shares
- Special Resolution changed rights so value moved to A shares
- New Co then liquidated - €2m passed to H & W
- Transfer of Value deemed to be Distribution via S.130

⇒ High Court agreed S.130 applies

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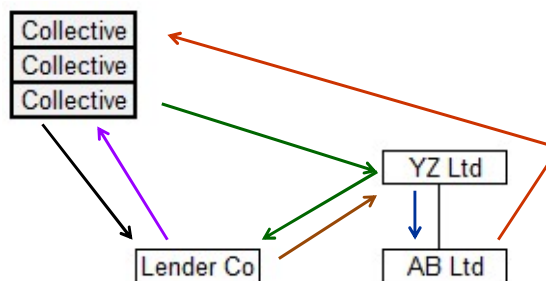
Investment v Trade Losses – Non-Taxable Income (S.812)

- 28TACD2020 – 59 TACD 2020 – 32 Individual Appellants
 - Too complicated to properly address but...
 - Case Involved Irish Investors and 3 BVI companies
 - Investors put in own money plus borrowed money from BVI Co ('limited recourse')
 - Funds used to buy rights to dividends – not actual shares
 - Argued that dividends received not taxable in Investors' hand - S.812 etc
 - Argued this was 'trade in financial instruments and securities' so Case I loss
 - Main benefit appears to be tax relief linked to the Loss Claims
 - Appellants had made Expressions of Doubt
 - In summary their case was;
 - (i) Trading so losses allowed, (ii) S.812 so income ignored and (iii) genuine doubt

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28TACD2020 – 59 TACD 2020 cont...



(1) Lender loans € to YZ Ltd

(2) YZ Ltd uses € to buy shares in AB Ltd

(AB Ltd declares but does not actually pay a dividend)

(3) Collective borrows money from Lender

(4) Collective buys 'right to receive dividend' from YZ Ltd

(5) YZ uses proceeds from sale of dividend rights to repay Loan

(6) AB Ltd now pays the dividend

(7) Collective uses dividend to repay money to Lender

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28TACD2020 – 59 TACD 2020 cont...

- One Investor had actual loss of €10k but claimed Case I Loss €207k
 - Revenue's case included
 - Entire scheme was about generating Losses but not actually suffering losses
 - Initial 'investments' was non-refundable so really it was a 'fee'
 - Documents targeted Irish resident and marginal-rate tax-payers
 - S.812 only applied to Irish entities (and could still assess Individual anyway)
 - (i) Not a trade, (ii) S.812 did not apply and (iii) Expressions of Doubt not genuine
- ⇒ Assessments upheld – All Revenue arguments upheld
- Case re-stated for High Court
 - Curious that Anti-avoidance provisions not the basis of Revenue's case

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S.811 – Artificial CGT Loss

- 134TACD2020
 - Case involved CGT loss by Appellant in 2004 being denied by Revenue
 - €2.6m loss claimed against other gains in 2004 and 2005 so CGT saving €531k
 - Revenue raised S.811 'Notice of Opinion' that this was a 'tax avoidance transaction'
 - Appellant appealed that it was not a 'TAT' and Revenue figures were wrong
 - Note the Appellant's Returns failed to note that transactions involved 'connected parties' even though he was relying on MV rules to generate the loss
- See next slide - Appellant sold Bond worth €2.9m for €319k but as 'connected parties' MV imposed so deemed loss €2.6m+

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S.811 – Artificial CGT Loss cont.....

```
graph TD
    Appellant -- "30,000 €1 pref shares" --> CPS
    CPS -- "Holdings" --> NEL
    CPS -- "Tax Advrs" --> STN
    NEL -- "Bond €2.9m" --> Bond
    Bond --> STN
    Appellant --> STN
```

- NEL bought German Bond for €2.9m
- NEL sold Option to STN for €2.67m – Bond value €2.9m
- NEL sold Bond to Appellant for €578k
- Appellant sold Bond to STN for €319k

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S.811 - 134TACD2020 cont...

- TAC referenced the O'Flynn case and that Appellant entered into a '*complicated series of transactions*'
- Appellant claimed a loss that had '*no correlation to the actual monetary loss*'
- Therefore the Appellant procured a 'tax advantage'
- Errors by Revenue in description of scheme were not material
- Appellant had also evoked Hans Droog about Revenue's ability to revisit 2004 etc
- TAC basically ducked the Timing issue as being a matter for higher Courts.
- TAC said Appellant's purchase of Pref Shares was to 'connect him' with the group

⇒ Notice was Valid and Losses should not be allowed

- Case re-stated for High Court

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Game Changers

(Cases that might change interpretations)
(or provoke new legislation!)



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Retirement Relief:

- 28TACD2019 – Farmers selling Co-Op shares
 - Farmer argued that shares necessary to secure sale of milk so 'trade asset'
 - S.598 excludes '*..shares or securities or other assets held as investments*'...
 - Q – all shares or only shares 'held as investment'.
 - Revenue argued 'all shares' not just investments
 - Revenue argued shares not 'used for the purposes of farming'
 - TAC agreed with Revenue so appeal denied.
- ⇒ Appeal Denied and no RR
 - Interesting angle and clarity re. position of shares and 'used for trade'
 - This was a test case – 15 other farmers with same issue
 - Worth reading for references to 'interpreting tax legislation'

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S.84 CAT Exemption:

- 32TACD2019

- Inheritance of $\frac{1}{4}$ share in Residue by nephew who used money for sick children
- Will drafted when 1st child was a baby and before 2nd child was born
- **No mention of kids in Will**, just nephew.
- Revenue denied S.84 exemption as (i) inheritance not taken by incapacitated person and (ii) not conditional on being used for medical care.
- Case turned on wording 'benefit must be *'taken exclusively for the purpose of discharging qualifying expenses of an individual'*
- **Does not say 'made' or 'given'** – so nephew's intention is what matters.

⇒ S.84 relief applied and inheritance was exempt

- Legislation to follow?

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Reducing Tax Credits to collect tax

- 21TACD2020

- Appellant owed €828 in 2010 which was to be collected via tax credits
- Self-assessed in 2012 so submitted Return – ended up owing €828
- Appellant argued it was wrong to use 2012 assessment to collect 2010 P21 bill
- Technical argument – see case
- TAC concluded this was wrong – it was merely restating the 2010 liability in 2013
- Revenue can't use a collection tool to enforce a different form of collection

⇒ Appeal upheld – Assessment to be amended

- Of course Appellant still owes the €828 from 2010 - what happens next? Keep rolling forward against tax credits for future years? Enforce collection of 2010 liability?

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Single Parent Status (SPCCC – Single Person Child Carer Credit):

- 98TACD2020
 - Appeal revolved around SPCCC and whether appellant was cohabiting
 - He had SPCCC but Revenue raised P21s removing same – their case included
 - **Unrecorded but noted phone call** where is allegedly said he was cohabiting
 - **TV programme** he and his partner had been in which they were presented 'as a couple'
 - **"undisclosed 3rd Party information"** that they did NOT present in evidence
 - Appellant was staying with partner 3 nights per week but insisted that was it.
 - Both sides had various documents supporting their positions
 - Interesting case as Revenue's entire argument was on this 'cohabiting' issue
- ⇒ Appeal Upheld – P21s dismissed
- TAC agreed that Appellant had done enough to prove he was not cohabiting



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Incapacitated Child Tax Credit:

- 117TACD2019
 - Guardian claimed ICTC – Revenue refused - illness related to mental health
 - Debate about nature of 'guardianship' ignored here but was one of the grounds
 - Main argument from Revenue – incapacitation was not 'permanent'
 - Revenue argued the condition could be managed with medication and could lessen over time – she was not unable to get employment and earn a wage etc.
 - TAC – this was more than a 'monetary' test – could she really live 'independently'?
 - Person has medication and welfare officers and psychiatrist and was still struggling
- ⇒ Appeal Upheld – ICTC was due
- Might be possible to mitigate condition and get work etc – but not enough
 - Someone had to make sure she took the medication etc
 - Child had condition before she turned 21 and TAC believed it was 'permanent'



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Nursing Home (Medical) Expenses – Order of Offset:

- 06TACD2020
 - Fascinating case which advisors need to be aware of
 - Man had Pensions etc circa €26k as well as significant Deposit Interest of > €100k
 - Claimed Nursing Home Fees against Deposit Interest first rather than other income
 - Revenue insisted Nursing Home fees first set against 'other income' via S.261
 - Basically S.261 confirms DIRT rate applies to deposit interest
 - TAC agreed that S.261 does not prevent Appellant's argument
- ⇒ Appeal upheld - Nursing Home Fees can be set against Deposit Interest first
- Remember Nursing Home Fees a 'personal allowance' and NOT a Tax Credit

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CGT – RR via 599 v 598

- What happens if S.599 clawback – can S.598 apply? Based on old Appeal case Revenue have indicated no but...
-
- 140TACD2020
 - Land transferred by Mother to Son in 2013
 - Son sold the land in 2014
 - She claimed RR in 2013 Form 11 – 'Retirement Relief – Within the Family'
 - When audited later she confirmed RR was via S.598
 - Revenue raised CGT assessment as S.599 clawed back
- ⇒ Appeal Upheld – S.598 applied

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CGT – 598 v 599 - 140TACD2020 cont...

- Appellant had 2 arguments:
 - Selecting 'Retirement Relief – Within Family' was simply a statement of fact and not a selection of S.599
 - Anyway, even if S.599 then once disapplied via S.599(4) then S.598 applied
- Revenue argued
 - Boxes 'within family' and 'outside of Family' denoted S.599 and S.598
 - S.599 (specific) over-rules S.598 (General)
 - S.599 claws back relief – does not permit access to S.598
- TAC noted phrases like 'claimed' and 'granted' in S.599, and that 'Family' had wider meaning than 'child' - and that Revenue has asked mother to clarify legal provision she was relying upon implying ambiguity

(Not being stated for High Court)

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Medical Services - VAT

- 126TACD2020
 - Appellant was unlimited company with one employee, Dr. AA
 - ZZ was an organisation for local GPs which organised locum cover
 - Dr. AA worked up to 120 hours pw on holiday cover, sick leave, out-of-hours etc
 - Dr. AA invoiced ZZ, ZZ collected Patients fees etc
 - Revenue raised VAT assessments on basis that Invoices to ZZ should be + 23%
 - Appellant appealed on the basis that provision of 'medical services is exempt
 - Note original assessments issued in December 2015 for 2011, 2012 & 2013
 - 2011 pulled by Revenue after Appellant argued 'out of time'
 - Note Appellant argued technical problem with ability to raise assessments
 - Not a TAC issue – High Court issue – Stanley v Revenue etc

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Medical Services – VAT - 126TACD2020 cont....

- Appellant quoted EU and UK cases – legal format does not alter nature
- Revenue argued individual contracts cannot be ignored
- Revenue pointed to ‘supervision and support’ provided by ZZ
- Dr. AA had personal Professional Indemnity Insurance
- ZZ provided infrastructure and administrative support only
- Not consistent with ‘supply of staff’ as ‘control of employee’ never changed
- Bottom line, Appellant via its employee Dr. AA provided the actual medical care to Patients via clinics of ZZ so VAT Exemption did apply

⇒ Appeal upheld – VAT assessments wrong

- Case being restated for High Court

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Sundry Other Cases / Issues

(Expenses, VAT invoices, etc)



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Domicile Levy

- 175TACD2020

- Appellant had > €1m in Rental and other income but also > €466k Case I Loss
- He paid income tax of €150k but > €200k **if you count USC**
- He was Irish resident and Domiciled
- Appealed imposition of Domicile Levy as
 - USC is 'income tax' so he paid > €200k
 - Worldwide income was < €1m if you take trade loss into account
- TAC accepted Revenue's Expert and – with some adjustments – CGT stood

⇒ TAC Denied both arguments (USC is a tax on income but not income tax)

- Case Not being appealed further
- Domicile Levy criteria was income > €1m, tax < €200k and Irish property > €5m

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Domicile Levy

- 176TACD2020

- Appellant was a hotelier but also had salaries, rent, dividends etc
- Hotel was loss-making so he had significant refunds for 2010 & 2011
- Revenue refunded these but retained €200k for each year for Domicile Levy
- Appealed imposition of Domicile Levy as
 - Worldwide income was < €1m if you take trade loss into account
 - Similar argument to last case – loss was a deduction when estimating income and Not a deduction in computing 'total income'
 - Also same argument re. USC bring tax bill > €200k

⇒ TAC Denied both arguments (for same reasons)

- This Case IS being re-stated for the High Court

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CGT – Cessation of a Life Interest

- 156TACD2020
 - Father died leaving Farm to spouse for life and then to daughter – Probate 1995
 - Mother surrendered Life Interest in 2001 – Daughter sold land in 2017
 - Dispute included argument about RR – ignored here
 - Appellant's argument was that base cost is based on MV in 2001
 - Revenue argued S.573 meant value is based on date of death
 - The Will did not create a Trust so S.576 could not be applied(??)
 - TAC noted Life Interest is a Trust so S.576 did apply – so S.547 / S.549 applied

⇒ TAC Upheld Appeal and CGT based on Higher Base Cost

- Surprise as was not aware Revenue held this view – might have been a technical point but.....

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Re-grossing

- 135TACD2020
 - Appeal revolved around VAT and PAYE and a company in liquidation
 - VAT was removed so only PAYE issue needed to be decided
 - A variety of issues arose in this case
 - Mileage claims by employee and Director being disallowed
 - Whether car and lawnmower owned by company or Director
 - Legal issues re. dealing with Director and not Liquidator
 - Of interest was the TAC agreeing with Appellant that Revenue were wrong to re-gross the payments when estimating the PAYE

⇒ Appeal partially upheld – mostly denied and some PAYE due

- Note periods were pre-2018 so pre-S.986A which allows re-grossing.

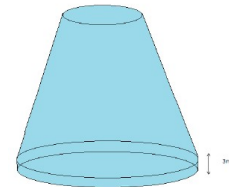
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Church Candles – 0% v 23%

- 119TACD2020

- Para 13(4) Candles are 0% as long as white and cylindrical but NOT if '*decorated, spiralled, tapered or perfumed*'
- Appellant patented Cone-shaped Candle for churches as 'safer'
- Had charged 0% Revenue raised assessments seeking 23%
- Candle still 'cylindrical' – just wider at one end than the other
- Therefore argued '*not tapered but frustoconical*'
- TAC concluded they were 'tapered' and not cylindrical



⇒ Appeal Denied – 23% VAT

- Off to High Court (probably because these appear to be Church Candles so adding 23% would hit price).

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Can a Boat be a Caravan?

- 121TACD2020

- Appellant imported a boat from the UK and proceeded to live in it
- Claimed back VAT on the basis that it was a '*caravan, mobile home or similar structure designed for residential purposes*'.
- Allowed claim back excess > 13.5% if....
- Revenue refused – it was not 'similar to caravan' – it could be driven etc
- Appellant argued engine was little different to a generator – used for appliances etc
- Revenue argued it was actually 'means of transport' even if not used for this

⇒ Appeal Denied – Revenue were right to deny refund

- Something can be 'intended' to be used to transport persons or goods even if that is not the owners' personal intention.

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VAT – 'New Means of Transport'

- 15TACD2020
 - Appeal involved imposition of VAT on importation of Honda bike from the UK
 - 2013 Bike bought and imported by Appellant in 2018
 - Appellant argument was bike was 'so old' that VAT should not apply
 - However the bike had < 6,000kms 'on the clock'
 - S.2 defined 'new means of transport':
 - (i) < 3 months old rule, OR (ii) has travelled 6,000km or less rule
 - Clearly bike was 'new' even though 5 years old
- ⇒ Assessments stand and Irish VAT was payable

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VAT – 'Input Credits on Indirect Costs'

- UKUT2020 – HMRC v Royal Operate House Covent Garden Foundation
 - Opera House has both exempt sales (Tickets) and Vatable sales (programmes, food)
 - Reclaimed % of VAT on Production Costs as the show itself drove the 'other supplies'
 - The better the show – the bigger the crowd – the more programmes, food, etc
 - HMRC accepted Programmes etc - rejected links to Ice Cream and Catering sales
 - UT agreed with HMRC – indirect link not enough
 - Production was 'cost component' of ticket and programme sales but not catering etc
- ⇒ HMRC were right to deny Inputs based only on indirect link to Vatable supplies

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Nursing Home (Medical) Expenses:

- 54TACD2019

- Man claimed tax relief for €7k and €8k fees in 2017 and 2018.
- Revenue checked claim and reduced to what he actually 'defrayed'
- Nursing Home paid from Parents' Joint Bank Account
- He paid €30pw to that account via standing order
- He also gave parents (Mother) €150 - €200 cash each week
- No evidence that cash was used to pay nursing home costs
- TAC allowed 'cash lodgements' to joint account as well as €30pw Revenue has allowed, but otherwise assessments were correct

⇒ Assessments adjusted slightly but Revenue correct to disallow

- Practitioners need to be aware of requirement to incur the cost when claiming medical costs



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Examinership v S.997A - 69TACD2020

- S.997A allows Revenue deny PAYE for director if not paid by company
- Assessment involved Years 1 and 2 – Company put into Examinership in Year 3
- Examinership settlement included unpaid taxes including PAYE
- Directors salaries for Y1 and Y2 per P35 were €37k and €27k
- His drawings were €52k each year – argument about salary v loan repayment
- Revenue raised personal assessments for Y1 and Y2 denying PAYE credit and including revised salaries
- Appealed as (i) excess was directors loan repayment and (ii) Revenue can't circumvent protections from Examinership via S.997A

⇒ Appeal Upheld – Companies Act over-ruled Taxes Act

- Loan v Salary not relevant as all liabilities for those years closed off by Examinership



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Examinership v S.997A

72TACD2020

- Husband and Wife Directors both had salaries in Year 1
- Company had unpaid PAYE of €23k+ when company went into Examinership
- Company went into Creditors' Liquidation and company's PAYE was never paid
- Revenue raised assessments on Directors via S.997A
- Appellant argued that funds were in the company but Liquidator and Examiner took all monies for their own 'outrageous fee'
- TAC felt for Directors but nothing he could do

⇒ Assessments stood – Directors must pay the tax

- Directors should have paid PAYE before appointing Examiner – they didn't know about S.997A



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S.997A - 180TACD2020

- Familiar story – Directors Salaries and Company in Creditors Voluntary Liquidation
- PAYE for 2015 and 2016 was unpaid when liquidation ended
- Revenue re-issued personal assessments reducing credit to PAYE actually paid
- Difference was that revised P35s were submitted for both years
- Revised figures meant no 'un-paid PAYE' so S.997A could not apply
- Agent insisted he agreed with liquidator before making changes
- Basis was that originals were incorrect as some of the payments were actually loan repayments and not 'net wages'



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S.997A - 1180TACD2020 cont...

- Revenue challenged their entitlement to amend originals – P35s and Form 11s had been filed and they can't now change contemporary documents to give them "a better outcome"
- TAC noted that no attempt was made to show that this was a 'correction' or how the original 'error' arose etc.
- Didn't matter as (S.959V) submissions can be amended AFTER Revenue Audit had commenced and this was clearly the case

⇒ Appeal Denied – Assessments stood



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RCT – Challenging 20% RCT Rating

- 77TACD2020
 - Sole-trader challenging Revenue's refusal to apply 0% RCT
 - Revenue explained that they had raised questions about gaps in his submissions
 - Until he deals with O/S queries – they will not issue 0% rating
 - Appellant argued he needs 0% as he needs the funds to support his family
 - TAC held burden of proof rests with Appellant and he has not dealt with same

⇒ 20% Rating upheld



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Help to Buy Scheme

- 90TACD2020

- Help to Buy Scheme required Loan-to-Value of 70%
- Appellant borrowing 71% of building cost but got site for free as a gift
- Revenue denied as borrowings < 70% of Property Value

⇒ Revenue were right to deny Help to Buy claim

- Self-builds can be complicated but Appellant fell below 70% even if different arguments accepted



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CCS v S.434(3A)

- 129TACD2020

- Subsidiary paid €665k Dividend to its Parent Company in 2012
- **Forgot to tick the S.434(3A)** Election Boxes in both CT1s
- Revenue Audit in 2015 ended with assessment for CCS of €26,500
- Appellant tried to amend 2012 CT1s but Revenue refused
- Appeal involved technical argument re. nature of dividend and complaint that it was unfair to prevent amendment of Returns
- Bottom line – no election so FII so CCS arose

⇒ Appeal Denied – Surcharge was payable

- €26k on €665k dividend – could have been far worse!



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Rental Mileage & S.23

- 130TACD2020

- Husband & Wife held many Rental Properties and bought S.23 unit in 2003
- Wife t/f'ed her share to husband in 2012.
- They were also claiming Motor Costs for managing the units based on Civil Service rates as well as insurance, tax, repairs etc
- Revenue clawed back element of S.23 as 'sold within 10 years'
- Revenue allowed actual motor costs but not mileage claim and other costs
- Appellant argued sale did not t/f beneficial interest and anyway there is a concession for inter-spouse
- TAC reiterated that it is not concerned with concessions

⇒ Appeal Denied – S.23 was clawed back, Motor Expenses was reduced



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SUMMARY / Q & A



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SUMMARY:

- 4-year Rule – Not possible to circumvent S.865? S.99
- Proper Records / Nature of Payments - Onus of proof etc
- Professionals – Bad news for CCS v GOOD News for VAT for Medical Profession
- Employee v Self-Employed – UK v Ireland – what next?
- Anti-Avoidance – 2Gd2BTru, Kittle In Ireland, unrealistic expectations
- Game-changers – There is always hope – don't be discouraged
- Advisors – Protect clients v Protect yourself?

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Thank you for your attention

QUESTIONS?

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