

APPROVED

THE HIGH COURT

[2024] IEHC 245

RECOPRD NO. 2023/241R

BETWEEN:-

THE REVENUE COMMISSIONERS

Appellant

-and-

AIDAN HENNESSY AND GERARD HENNESSY

Respondents

Judgment of Mr Justice Oisín Quinn delivered on the 26 day of April 2024

Introduction

1. This is an appeal by the Revenue Commissioners (the “Revenue”) by way of a Case Stated against a Determination of the Tax Appeals Commissioner (“TAC”) of 18 April 2023. The TAC found in favour of the Respondents (the “Taxpayers”) that certain taxes were not due by virtue of the provisions of section 825A of the Taxes Consolidation Act 1997 as amended (“TCA 1997”). The Case Stated seeks the opinion of the High Court on three questions pursuant to s949AQ of the TCA 1997. This appeal was heard on 11 April 2024 and primarily concerned how to interpret the statutory definition of a ‘proprietary director’ in section 472(1)(a) of the TCA 1997.

Background

2. The appeal arises from work done by the Taxpayers in the UK on behalf of a Donegal company (the “Company”). The material facts found by the TAC are not under challenge and are as follows:-
 - (i) The Taxpayers are directors, shareholders and full-time employees of the Company.

- (ii) For the years 2015, 2016 and 2017, the Taxpayers submitted their Irish income tax returns on time and claimed Transborder Workers Relief (“TWR”), in accordance with Section 825A TCA 1997.
 - (iii) The Taxpayers are Irish residents and live in County Donegal.
 - (iv) The Company’s offices are located in Strabane and all of the Taxpayers employment duties are carried out exclusively in the UK.
 - (v) The Taxpayers each have a “qualifying employment” with the Company, as their employments were held for a continuous period of significantly more than 13 weeks.
 - (vi) The Taxpayers are tax resident in the State.
 - (vii) The Taxpayers wholly exercised the duties of their employment in the UK.
 - (viii) The Taxpayers UK employment income was subject to UK PAYE (Pay as You Earn) and NIC (National Insurance Contributions)
 - (ix) The “ordinary share capital” of the Company as defined in Section 2 TCA 1997 consisted of 5,000 shares in the form of 1000 “ordinary shares” and 4000 “A ordinary shares”.
 - (x) The Taxpayers’ brother holds 4000 “A” ordinary shares in the Company.
 - (xi) In accordance with the Articles of Association, the holder of “A” ordinary shares is not entitled to vote at any general meeting of the Company.
 - (xii) The Articles of Association impose no limitations on the ordinary shares held by the Taxpayers, such that the ordinary shares carry voting rights in addition to other rights as assigned to them by the Articles of Association of the Company.
 - (xiii) The ordinary share capital of the Company does not have a right to a dividend at a fixed rate.
 - (xiv) The Taxpayers are not beneficial owners of more than 15% of the ordinary share capital of the Company.
 - (xv) The definition of a proprietary director of a Company is determined either by an ownership test or a control test.
3. Essentially therefore, as the Taxpayers paid tax in the UK on their income for work done on behalf of the Company, they claimed that by virtue of section 825A(3) of the TCA 1997 they were entitled to Transborder Worker Relief (“TWR”) in respect of their tax returns in the State.
4. The Revenue on the other hand claimed that they were not entitled to this relief because by virtue of section 825A(2)(c) of the TCA 1997, the relief is not available to a person who is a ‘proprietary director’ of the employing company and the Revenue position is that each Taxpayer is a ‘proprietary director’ of the Company. In all other respects the Revenue accepted that the Taxpayers would otherwise be entitled to the TWR. Section 825A provides that ‘proprietary director’ has the meaning

set out in section 472(1)(a) of the TCA 1997. Accordingly, the central issue in this appeal is whether or not the Taxpayers fall within that definition.

The Case Stated

5. The Case Stated contains the following three questions of law for the opinion of the High Court:-
- i. Did the Commissioner err in law in the interpretation of section 472(1)(a) TCA 1997, in particular as to the meaning of the phrase “control more than 15% of the ordinary share capital of the Company”?
 - ii. Did the Commissioner err in law in concluding that the Taxpayers were not proprietary directors of the Company, having regard to the proper interpretation of section 472(1)(a) TAC 1997, and the respective shares and share rights held by the shareholders of the Company for the tax years under appeal?
 - iii. Did the Commissioner err in law in concluding that, having regard to the definition of proprietary director in section 472(1)(a) TCA 1997, the respective shares and share rights held by the shareholders in the Company, and the provisions of section 825A TCA 1997, the Taxpayers were entitled to TWR and the Assessments under appeal should be reduced to nil?
6. While there are three separate questions, in essence the matter distilled down to one core question as to whether or not the TAC was correct as a matter of law to conclude that the Taxpayers were not ‘proprietary directors’ within the meaning of the relevant section of the TCA 1997. This question therefore involves the application of the relevant principles set out in the jurisprudence in relation to questions of statutory interpretation involving a provision of tax law.

Relevant Statutory Provisions

7. The following are the most relevant statutory provisions to this Case Stated:-

Section 825A(1) (2) & (3)

(1) *In this section –*

‘authorised officer’ has the same meaning as in section 818;

‘proprietary director’ has the same meaning as in section 472;

‘qualifying employment’, in relation to a year of assessment, means an office (including an office of director of a company which would be within the charge to corporation tax if it were

resident in the State, and which carries on a trade or profession) or employment which is held

–

- (a) outside the State in a territory which the Government of which arrangements are for the time being in force by virtue of the section 826(1), and*
- (b) for a continuous period of not less than 13 weeks, but excluding any such office or employment –*
 - (i) the emoluments of which are paid out of the revenue of the State,*
 - (ii) with any board, authority or similar body established in the State by or under statute;*

‘the specified amount’ in relation to an individual means, as respects the year of assessment concerned, the amount of tax for that year determined by the formula

A x B

—

C

where –

- A. is the amount of tax which, apart from this section, would be chargeable on the individual for that year of assessment, other than tax charged in accordance with section 16(2), and after taking account of any such reductions in tax as are specified in the provisions referred to in Part 2 of the Table to section 458 but before credit for any foreign tax paid on any income, profits or gains assessed for that year,*
- B. is the total income of the individual for that year but excluding any income, profits or gains from a qualifying employment for that year,*
- C. is the total income of the individual for that year.*

(2) This section shall not apply in any case where the income, profits or gains from a qualifying employment are –

- (a) chargeable to tax in accordance with section 71(3)*
- (b) income, profits or gains to which section 822 applies, or*
- (c) income, profits or gains paid to a proprietary director or to the spouse of that person by a company of which that person is a proprietary director.*

(3) Where for any year of assessment an individual resident in the State makes a claim in that behalf to an authorised officer and satisfied that officer that –

- (a) he or she is in receipt of income, profits or gains from a qualifying employment,*

- (b) *the duties of that qualifying employment are performed wholly outside the State in a territory, or territories, with the Government or Governments of which arrangements are for the time being in force by virtue of section 826(1),*
- (c) *the full amount of the income, profits or gains from that qualifying employment is, under the laws of the territory in which the qualifying employment is held or of the territory or territories in which the duties of the qualifying employment are performed, subject to, and not exempt or otherwise relieved from, the charge to tax,*
- (d) *the foreign tax due on that income, profits or gains from that qualifying employment has been paid and not repaid or entitled to be repaid, and*
- (e) *during any week in which he or she is absent from the State for the purposes of the performance of the duties of the qualifying employment, he or she is present in the State for at least one day in that week,*
- he or she shall, where the amount of tax payable in respect of his or her total income for that year would, but for this section, exceed the specified amount, be entitled to have the amount of tax payable reduced to the specified amount.*

Section 472(1)(a)

(1)

(a) *In this section –*

...

“proprietary director” means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

Section (2)(1)

(1) *In the Tax Acts, except where otherwise provided or the context otherwise requires –*

...

“ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company;

Relevant Legal Principles

8. Counsel on both sides very helpfully drew attention to the key cases where detailed consideration is given to the appropriate approach to take to questions of statutory interpretation involving taxation statutes. Helpfully, there was no substantial disagreement as to the key principles applicable to the exercise of statutory interpretation at the heart of this appeal.

9. The key cases referred to include the Supreme Court decisions in *Dunnes Stores v Revenue Commissioners* [2020] 3 IR 480 and *Bookfinders Ltd. The Revenue Commissioners* [2020] IESC 60; and then the consideration and application of the principles from those judgments by McDonald J. in *Perrigo Pharma v The Revenue Commissioners* [2020] IEHC 552, at para 74; and finally, the discussion of these developments by the Supreme Court in the judgment of Murray J. in *Heather Hill v An Bord Pleanála* [2022] IESC 43 at para.s 105 to 116 in particular.
10. Of particular note is the summary of the principles that emerge from *Dunnes Stores* and *Bookfinders* by McDonald J. in *Perrigo Pharma* at para 74 of his judgment as follows:-

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

- (a) *If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
- (b) *Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*
- (c) *Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
- (d) *Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning;*
- (e) *In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

- (f) *Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected;*
- (g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1993] I.R. 750 where Kennedy C.J. said at p. 766:*

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.

11. These were the principles applied by the TAC in this case without any significant complaint. To a certain degree it might be said that these cases suggest that the ‘literal’ and ‘purposive’ approaches to statutory interpretation are no longer hermetically sealed (see para 108 of *Heather Hill*). On that view, which I accept, it is not necessary to awkwardly wrench more than one meaning from a provision so as to find ambiguity and thereby to facilitate looking at the ‘purpose’ of the statutory provision. To the extent that the line between what is now permissible has become blurred Murray J. sets out ‘four basic propositions that must be borne in mind’ from para.s 113 to 116 of *Heather Hill* as follows:-

“113. First, ‘legislative intent’ as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in *Crilly v. Farrington* [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably

attributed to a collective assembly whose members may act with differing intentions and objects.

114. *Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see DPP v. Flanagan [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in McGrath v. McDermott [1988] IR 258, at p. 276).*

115. *Third, and to that end, the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.*

116. *Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However - and in resolving this appeal this is the key and critical point - the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."*

12. As this case involves interpretation of a taxation statute it is important to recall the dicta of O'Donnell J. in *Bookfinders* at para 52 as follows:-

“52. The task of statutory interpretation in any context is the ascertainment of meaning communicated in the highly formal context of legislation. But some degree of uncertainty or lack of clarity is almost inevitable, and the principles of statutory interpretation are designed to assist in achieving clarity of communication. As long ago as 1964, in C.K. Allen, *Law in the Making*, (Oxford: Oxford University Press, 7th ed., 1964), the 7th edition of a textbook which had spanned the golden age of strict literal interpretation, Professor C.K. Allen observed at p. 349 that:-

“common experience tells us that it is impossible to devise any combination of words, especially in the form (which all laws must take) of a wide generalisation, which is absolutely proof against doubt and ambiguity. So long as men can express their thoughts only by the highly imperfect instrument of words, an automatic, irrefragable certainty in the prescribed rules of social conduct is not to be attained”.

*It is not, and never has been, correct to approach a statute as if the words were written on glass, without any context or background, and on the basis that, if on a superficial reading more than one meaning could be wrenched from those words, it must be determined to be ambiguous, and the more beneficial interpretation afforded to the taxpayer, however unlikely and implausible. The rule of strict construction is best described as a rule against doubtful penalisation. If, after the application of the general principles of statutory interpretation, it is not possible to say clearly that the Act applies to a particular situation, and if a narrower interpretation is possible, then effect must be given to that interpretation. As was observed in *Kiernan*, the words should then be construed “strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language”.*

13. Finally, the parties were agreed on the legal dicta that concern the nature of a ‘share’. The decision in *Borland’s Trustee Co v Steel Bros* [1901] 1 Ch 279 was cited as representing a fair summary of the nature of a share. In that case, Farwell J. stated that –

“A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders *inter se* in accordance with s.16 of the Companies Act, 1862 [now section 31 of the Companies Act, 2014]. The contract contained in the articles of association is one of the original incidents of the share.”

14. The parties agreed that the correct understanding of the nature of a share is that it confers an interest in the company itself, rather than conferring an interest in the property of the company. Thus, in *Commissioners of Inland Revenue v Crossman* [1937] AC 26 Russell L.J. stated the following (at p66) as to the nature of the share:

“It is the interest of a person in the Company, that interest being composed of rights and obligations which are defined by the Companies Act and by the memorandum and articles of association of the company.”

15. This distinction between an interest in a company and an interest in the assets of a company, is reflected in *Short v Treasury Commissioners* [1948] 1 KB 116 where Evershed L.J. for the Court of Appeal states as follows at page 122:-

“Shareholders are not, in the eye of the law, part owners of the undertaking. The undertaking is something different from the totality of the share-holdings.”

Submissions

16. As the three questions essentially distil to one core question the submissions of each side focussed on that core question.
17. On behalf of the Revenue, it was submitted that the key issue was control and that the Taxpayers had control and the owner of the A Ordinary Shares had no ‘control’ because those shares had no voting rights. It was said that ‘control’ means a power of decision making or an ‘activating power’. While the owner of the A Ordinary Shares had the right to certain benefits (such as receipt of a dividend) he had no control over whether a dividend would be awarded or the amount of same. It was said that the purpose of the provisions (section 825A(2)(c) and the exclusion of ‘propriety directors’ from ‘relief’) was to exclude the benefit of the relief being afforded to people who had a real measure of control over the shares of a company and that the relief was intended for ‘ordinary employees’ and not people who were also Directors with real ‘control’ over the shares. It was said that the Taxpayers in reality had ‘control’ over the A Ordinary Shares, even though they were not the actual owners of those shares. The fact that the owner could enjoy the limited benefits of the rights attaching to those shares did not take away from the fact, as the Revenue saw it, that the Taxpayers by virtue of owning the voting shares had, for the purposes of the provision, control of the A Ordinary Shares.
18. It was submitted by Revenue that the definition in section 472 distinguished ‘ownership’ of the shares from ‘control’ of the shares, so this distinction had to mean something. To the extent that it

might be required to identify any ambiguity in the language contained in the definition of a 'proprietary director' then there was potentially ambiguity to the word 'control' and this opened up the appropriateness of looking at the purpose of the provisions. The purpose was to distinguish 'ordinary employees' from 'proprietary directors' who have a measure of ownership and control that ordinary employees do not. It was pointed out that the TAC at paragraph 61 of the Determination accepted that this description of the purpose of the statutory provision was correct. The Taxpayers, it was submitted by Revenue, as the persons in control of the business were therefore precisely the type of persons intended not to get the benefit of the TWR, by virtue of the provisions of section 825A(2)(c).

19. On behalf of the Taxpayers, it was submitted that the Determination of the TAC was correct and that there was no error of law in the reasoning of the TAC. It was submitted that in truth the Revenue analysis of the statutory provision involved a conflation of control of the business with control of the ordinary shares. The provision, it was submitted, clearly concerned control of 'ordinary share capital'. There was no dispute that the A Ordinary Shares constituted 'ordinary share capital' for the purposes of the statutory definition of 'proprietary director'. If the rights attaching to particular ordinary shares were limited, then that was immaterial. The real question was whether it could be said that the Taxpayers had control of those shares. It was submitted that they did not.

Decision

20. I am satisfied that the submissions on behalf of the Taxpayers and the decision and reasoning of the TAC are correct. In particular I am satisfied that the reasoning of the TAC as set out in the Determination of 18 April 2023 (see in particular paragraphs 58 to 66) is correct.
21. The word 'control' in the definition of 'proprietary director' is not a free-floating concept. It is linked by the words in the section to the 'ordinary share capital' of the company. Revenue does not dispute that 'ordinary share capital' can include shares without votes. Of necessity, control of shares that do not have votes will not involve controlling voting power. If the Revenue's arguments were correct, then the holders of the majority of the shares with votes would almost always, for the purposes of the definition of 'proprietary director', 'control' the ordinary share capital of other shareholders where that 'ordinary share capital' did not have voting rights attached. This would have the effect of rewriting the statutory definition to one focused on control of shares with voting rights, as opposed to control of 'ordinary share capital'.
22. In addition, 'control' of a measure of 'ordinary share capital' is not equivalent to 'power' over the company. 'Control' in this context can firstly only be understood by considering what the statutory provision defines the 'control' as being connected to. In this case it is 'control' of a particular

measure of 'ordinary share capital'. If the rights attaching to that particular share capital are limited, as the clear wording of the statutory definition of 'ordinary share capital' envisages as possible, then the nature of the power that will flow from having 'control' of that share capital will necessarily also be limited.

23. In this case, the Taxpayers did not own more than 15% of the ordinary share capital. Nor did they 'control' their brother's A Ordinary Shares which made up 80% of the ordinary share capital. The rights attaching to the A Ordinary Shares were in the Taxpayers brother's control. So, for example, if the Company declared a dividend for the A Ordinary Shares he would have the right to receive it or to enforce the payment of it. If the Company decided not to provide for any dividend to the A Ordinary Shares, the brother could consider whether or not such a decision was oppressive or otherwise in breach of his rights as a shareholder and he would have the entitlement to initiate the proceedings pursuant to the Companies Act if appropriate. If the A Ordinary Shares are redeemed he has the entitlement to receive the appropriate value (in this case, par value). In other words, as Counsel for the Taxpayers submitted, the raft of contractual and statutory rights attaching to the A Ordinary Shares are in the control of the Taxpayer's brother. He cannot be directed as to how to exercise those rights by either or both of the Taxpayers even though they control the majority of the ordinary share capital that has voting rights.
24. The fact that the par value and the dividends heretofore declared for the A Ordinary Shares may have been modest in value is irrelevant. Such value as they have and such rights as attach to those shares are in the control of the Taxpayer's brother. While it is true that he cannot control the amount of any dividend that may be declared from time to time for the A Ordinary Shares, this does not mean that he does not nonetheless control those shares. Many shareholders cannot control the dividend they will receive – this does not mean they do not control their shareholding, or conversely, that their shares are controlled by the owners of the majority of the voting rights.
25. Nor is it correct to say that this analysis does not adequately distinguish between 'ownership' and 'control'. The distinction between 'ownership' and 'control' arises in the context of the precise wording of the definition in section 472(1)(a) and there is a distinction between the two on the meaning found by the TAC. For example, if 16% of the ordinary share capital of a company (say 'EmployerCo') was beneficially owned by another company ('InvestorCo') and if a Director of EmployerCo had a controlling interest in InvestorCo then it is plausible that such a person would come within the definition of 'proprietary director' because, even though they would not be the beneficial owners of the 16% shareholding in EmployerCo, they would be in a position, in general, by virtue of their controlling interest in InvestorCo, to control the exercise of the rights associated

with the 16% shareholding of InvestorCo in EmployerCo. This analysis is not dependent on the extent of the rights that might be associated with that 16% shareholding.

Conclusion

26. In summary therefore, the definition of ‘proprietary director’ provides for it to arise in two contexts. One where the Director is the beneficial owner of more than 15% of the ‘ordinary share capital’ of the company; or secondly, where the Director controls, whether directly or indirectly, more than 15% of the ‘ordinary share capital’.

27. There is no dispute between the parties here as to the definition of ‘ordinary share capital’ and there is no dispute that ‘ordinary share capital’ can include non-voting shares. The purpose of the provision is to catch and exclude from the Transborder Workers Relief persons who are Directors of the employer and who own or control more than 15% of the ordinary share capital of the company.

28. This definition is not about control of the company itself as even if, which is not required, the ordinary shares had ‘voting rights’, simply having more than 15% of such shares would not, in most cases, give the person control of the company. Nonetheless, having more than 15% of the ordinary share capital of a company (which stake may by definition not have any ‘voting rights’) is a degree of ownership of share capital that would normally exceed that of an employee who had the benefit, for example, of sharing in an employee share option plan.

29. The meaning of the words in the relevant provision are self-evident and produce the interpretation so found by the TAC.

30. For the foregoing reasons the questions raised are answered as follows:-

1. Did the Commissioner err in law in the interpretation of section 472(1)(a) TCA 1997, in particular as to the meaning of the phrase “control more than 15% of the ordinary share capital of the Company”?

Answer: No

2. Did the Commissioner err in law in concluding that the Taxpayers were not proprietary directors of the Company, having regard to the proper interpretation of section 472(1)(a) TAC 1997, and the respective shares and share rights held by the shareholders of the Company for the tax years under appeal?

Answer: No

3. Did the Commissioner err in law in concluding that, having regard to the definition of proprietary director in section 472(1)(a) TCA 1997, the respective shares and share rights held by the shareholders in the Company, and the provisions of section 825A TCA 1997, the Taxpayers were entitled to TWR and the Assessments under appeal should be reduced to nil?

Answer: No