



29TACD2017

**NAME REDACTED**

**BETWEEN/**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against an assessment in relation to income tax. The Respondent raised a notice of amended assessment in July 2016 in respect of the tax year of assessment 2014 and the Appellant duly appealed. On agreement of the parties this appeal is adjudicated in accordance with the provisions of s.949U of the Taxes Consolidation Act 1997, as amended (hereafter 'TCA 1997').

**Background and submissions**

2. The Appellant was a proprietary director of X Limited (hereafter 'the company') in respect of the tax year of assessment 2014. As a proprietary director, the Respondent disallowed the Appellant's claim for a PAYE tax credit in accordance with section 472 TCA 1997. The Appellant filed his 2014 income tax return in June 2016, approximately 8 months after the statutory deadline. The Appellant claimed that he was not subject to the provisions of section 917EA TCA 1997 in relation to the mandatory electronic filing and payment of tax.



## **Legislation**

The relevant legislative provisions are as follows;

Section 472 TCA 1997 – Employee Tax Credit

Section 917EA TCA 1997 – Mandatory electronic filing and payment of tax

Section 959I TCA 1997 – Obligation to make a return

These provisions are set out in full in **Appendix I** below.

## **Analysis and findings**

3. The Appellant contended that he was entitled to the PAYE tax credit of €1,650 in respect of his earnings for the tax year of assessment 2014. The Respondent submitted that the tax credit was not available to a proprietary director in accordance with the provisions of section 472 TCA 1997. The Appellant did not dispute the fact that he was a proprietary director for the tax year of assessment 2014. Section 472 TCA 1997 provides that Schedule E emoluments in respect of which a PAYE credit may be given do not include emoluments paid to a proprietary director. I accept the Respondent's submission that the Appellant was not entitled to the PAYE credit in accordance with section 472 TCA 1997.
4. The Appellant's 2014 income tax return was filed in June 2016, approximately eight months post the statutory filing date. The Respondent stated that the Appellant was required to file his returns electronically and in accordance with s.917EA. However, the Appellant stated that he had received an exemption from this requirement in February 2012 due to the fact that he was unable to obtain broadband at his place of business. He stated that his returns were completed manually and filed in hard copy. He stated that he requested a hard copy Form 11 from the Respondent in respect of the tax year of assessment 2014 but did not receive it until mid-2016 and that this was the reason for late filing.
5. The Respondent stated that the Appellant was notified on 17 January 2015 that his returns were required to be submitted electronically in accordance with section





917EA TCA 1997, that a Form 11 in respect of the tax year of assessment 2014 issued to the Appellant electronically on 28 February 2015 and that reminders issued on 12 February 2016. The due date for submission in respect of the 2014 return was 31 October 2015, extended to 12 November 2015 for returns filed electronically through the Respondent's online service. The Respondent also relied on section 959I TCA 1997 which provides that *'every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period, a return in the prescribed form'*. I accept the Respondent's submission in this regard.

### **Conclusion**

6. The Appellant did not succeed in proving on the balance of probabilities that the assessments were incorrect and thus I determine that the assessments shall stand. This appeal is determined in accordance with section 949AK TCA 1997.

**APPEAL COMMISSIONER**

**November 2017**

***The parties to this appeal have not requested the Appeal Commissioner to state and sign a case for the opinion of the High Court***





## Appendix I

### Section 472 TCA 1997 – Employee Tax Credit

[(1) (a) In this section—

*“appropriate percentage”*, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

*“emoluments”* means emoluments to which Chapter 4 of Part 42 applies or is applied, but does not include—

(i) emoluments paid directly or indirectly by a body corporate (or by any person who would be regarded as connected with the body corporate) to a proprietary director of the body corporate or to the [spouse, civil partner, child or child of the civil partner] of such a proprietary director, and

(ii) emoluments paid directly or indirectly by an individual (or by a partnership in which the individual is a partner) to the [spouse, civil partner, child or child of the civil partner] of the individual;

*“director”* means—

(i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person, and

(iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person who is or has been a director;

*“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;

*“specified employed contributor”* means a person who is an employed contributor for the purposes of the [Social Welfare Consolidation Act 2005,] but does not include a person—





(i) who is an employed contributor for those purposes by reason only of [section 12(1)(b)] of that Act,] or

(ii) to whom Article 81, 82 or 83 of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 (S.I. No. 312 of 1996), applies.

(b) For the purposes of the definition of “*proprietary director*”, ordinary share capital which is owned or controlled as referred to in that definition by a person, being [a spouse, a civil partner, a minor child, or a minor child of the civil partner, of a director], or by a trustee of a trust for the benefit of a person or persons, being or including any such person or such director, shall be deemed to be owned or controlled by such director and not by any other person.

(2) The exclusion from the definition of “*emoluments*” of the emoluments referred to in *subparagraphs (i) and (ii)* of that definition shall not apply for any year of assessment to any such emoluments paid to an individual, being a child (other than a child who is a proprietary director) to whom *subparagraph (i) or (ii)* of that definition relates, if for that year—

(a)(i) the individual is a specified employed contributor, or

(ii) the [Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001)]<sup>6</sup>, in so far as they apply, have, in relation to any such emoluments paid to the individual in the year of assessment, been complied with by the person by whom the emoluments are paid,

(b) the conditions of the office or employment, in respect of which any such emoluments are paid, are such that the individual is required to devote, throughout the year of assessment, substantially the whole of the individual’s time to the duties of the office or employment and the individual does in fact do so, and

(c) the amount of any such emoluments paid to the individual in the year of assessment are not less than €4,572.

(3) Where an individual is in receipt of profits or gains from an office or employment held or exercised outside the State, such profits or gains shall be deemed to be emoluments within the meaning of *subsection (1)* if such profits or gains—

(a) are chargeable to tax in the country in which they arise,

(b) on payment by the person making such payment, are subject to a system of tax deduction similar in form to that provided for in *Chapter 4 of Part 42*,

(c) are chargeable to tax in the State on the full amount of such profits or gains under Schedule D, and

(d) if the office or employment was held or exercised in the State and the person was resident in the State, would be emoluments within the meaning of that subsection.

(4) Where, for any year of assessment, a claimant proves that his or her total income for the year consists in whole or in part of emoluments (including, in a case where the claimant is [a married person assessed to tax in accordance with *section 1017*, or a civil partner assessed to tax in accordance with *section 1031C*,] any emoluments of the claimant’s [spouse or civil partner] deemed to be income of the claimant by that section for



the purposes referred to in that section) the claimant shall be entitled to a tax credit (to be known as the “employee tax credit”) of—

(a) where the emoluments (but not including, in the case where the claimant is a [married person or a civil partner] so assessed, the emoluments, if any, of the claimant’s [spouse or civil partner]) arise to the claimant, the lesser of an amount equal to the appropriate percentage of the emoluments and [€1,650], and

(b) where, in a case where the claimant is a [married person or a civil partner] so assessed, the emoluments arise to the claimant’s [spouse or civil partner], the lesser of an amount equal to the appropriate percentage of the emoluments and [€1,650].

(5) Where a tax credit is due under this section by virtue of *subsection (2)*, it shall be given by means of repayment of tax.]

#### Section 917EA TCA 1997 – Mandatory electronic filing and payment of tax

[(1) In this section –

“*electronic means*” includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

“*repayment of tax*” includes any amount relating to tax which is to be paid or repaid by the Revenue Commissioners;

“*specified person*” means any person, group of persons or class of persons specified in regulations made under this section for the purposes of either or both *paragraphs (a) and (b) of subsection (3)*;

“*specified return*” means a return specified in regulations made under this section;

“*specified tax liabilities*” means liabilities to tax including interest on unpaid tax specified in regulations made under this section.

(2) *Section 917D* shall apply for the purposes of regulations made under this section in the same way as it applies for the purposes of this Chapter.

(3) The Revenue Commissioners may make regulations –

(a) requiring the delivery by specified persons of a specified return by electronic means where an order under *section 917E* has been made in respect of that return,

(b) requiring the payment by electronic means of specified tax liabilities by specified persons, and

(c) for the repayment of any tax specified in the regulations to be made by electronic means.

(4) Regulations made under this section shall include provision for the exclusion of a person from the requirements of regulations made under this section where the Revenue Commissioners are satisfied that the person could not reasonably be expected to have the capacity to make a specified return or to pay the specified





tax liabilities by electronic means, and allowing a person, aggrieved by a failure to exclude such person, to appeal that failure to the Appeal Commissioners.

(5) Regulations made under this section may, in particular and without prejudice to the generality of *subsection (3)*, include provision for –

- (a) the electronic means to be used to pay or repay tax,
- (b) the conditions to be complied with in relation to the electronic payment or repayment of tax,
- (c) determining the time when tax paid or repaid using electronic means is to be taken as having been paid or repaid,
- (d) the manner of proving, for any purpose, the time of payment or repayment of any tax paid or repaid using electronic means, including provision for the application of any conclusive or other presumptions,
- (e) notifying persons that they are specified persons, including the manner by which such notification may be made, and
- (f) such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by regulation made under this section to be performed or discharged by the Revenue Commissioners.

(7) Where a specified person –

- (a) makes a return which is a specified return for the purposes of regulations made under this section, or
  - (b) makes a payment of tax which is specified tax liabilities for the purposes of regulations made under this section,
- in a form other than that required by any such regulation, the specified person shall be liable to a penalty of €1,520[...]<sup>2</sup>.

(8) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.]<sup>1</sup>

#### Section 959I TCA 1997 – Obligation to make a return

[(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form.

(2) The prescribed form referred to in *subsection (1)* may include such matters in relation to gift tax and inheritance tax as may be required by that form.





(3) Where under this Chapter a person delivers a return to the Collector-General, the person shall be deemed to have been required by a notice under section 877 to deliver a statement containing the matters and particulars contained in the return or to have been required by a notice under section 879, 880 or 884 to deliver the return, as the case may be.

(4) A chargeable person shall prepare and deliver to the Collector-General, a return for a chargeable period as required by this Chapter notwithstanding that the chargeable person has not received a notice to prepare and deliver a statement or return for that period under section 877, 879, 880 or 884, as the case may be.

(5) Nothing in the specified provisions or in a notice given under any of those provisions shall operate so as to require a chargeable person to deliver a return for a chargeable period on a date earlier than the specified return date for the chargeable period.]

