



**136TACD2020**

**BETWEEN/**

**REDACTED**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Appeal**

1. This is an appeal to the Appeal Commissioners in relation to the denial of an application for exclusion from the Mandatory Electronic Filing requirements to file returns and make payments electronically in accordance with S.917EA Taxes Consolidation Act (hereafter referred to as "TCA") 1997 and S.I. No. 223 of 2011 - Tax Returns and Payments (Mandatory electronic filing and payment of tax) Regulations 2011.
2. By agreement of the parties this appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

**Background**

3. The Appellant is a Sports Club. The Club is required to file employee-related tax returns, in respect of its only employee. The Appellant has sought relief from the obligations of S.917EA TCA 1997 (hereafter referred to as "TCA 97") and be allowed continue to file returns and make payments relating to its employment activity in paper format.



4. It is not disputed by the Appellant that without the exclusion, the Club is obliged to file returns and make payments electronically subject to the provisions of S.917EA (4) TCA 97.
5. The Appellant was denied its exclusion request by the Revenue Commissioners on the basis that, in their opinion, the Appellant had not satisfied the conditions specified in S.I. No. 156 of 2012.
6. What is in dispute is whether the Appellant qualifies under the exclusion provisions of S.917EA(4) and S.I. No. 156 of 2012(5).

### **Legislation**

#### **7. Section 917EA TCA 1997 (as amended) 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.*

*(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.*

**8. Statutory Instrument No. 223 of 2011 - Tax Returns and Payments (Mandatory electronic filing and payment of tax) Regulations 2011.**

**Submissions**

9. The Appellant submitted that it is a voluntary organisation with 30 members. Duties are not assigned to one person, the Club struggles to break even every year, its income pattern is sporadic to the point that on some occasions its employee has to defer income for periods of time.
10. The Appellant further submitted that as it only has one employee it submits one annual return in respect of its only employee. This annual return is prepared by a Club member – an accountant as a favour to the members.
11. The Appellant submitted that the administrative burden without any volunteer responsibility and lack of internal expertise is excessive for a small amateur club without the capacity to file weekly or monthly returns. The Appellant further submitted that it does not have a club computer, a smart phone, offices, secretariat or internet provider.
12. The Respondent submitted that the Appellant, has been deemed to be a Mandatory e-filer with effect from 1 January 2019 under Phase 6 - PAYE Modernisation as the club is registered for Employers PAYE/PRSI and has an active employee on record.

13. The Respondent submitted that in accordance with Section 917EA (4) a person may be excluded from the requirement to file returns and make payments electronically where the Revenue Commissioners are satisfied that the person could not reasonably be expected to have capacity to do so. In accordance with Part III of the Interpretation Act 1937 a person includes an unincorporated body of persons.
14. The Respondent observed that capacity is not defined within Section 917EA, however it is defined in Statutory Instrument No. 223 of 2011. Capacity is defined as
- “Capacity means sufficient access to the internet by which either or both a specified return or the payment of any specified liabilities may be made by electronic means and, in the case of an individual, also means not prevented by reason of age or mental or physical infirmity from either making or both making a specified return or paying any specified liabilities by electronic means”.*
15. The Respondent concluded therefore, under the legislation that “capacity” must be judged in terms of (a) sufficient access to internet or (b) prevented by reason of age or infirmity. As an unincorporated body, in this case a club, not being an individual the criteria “prevented by reason of age or infirmity” does not apply to the Appellant.
16. The Respondent submitted that the sole issue to be decided in relation to a non-individual case is the “sufficient access to the internet” criteria.
17. The Responded outlined the Appellant’s reasons for requesting the exemption as follows;
- One seasonal employee
  - Overburdensome on a voluntary organisation
  - Does not have the human resources to do so
  - Does not have club computer
  - Does not have a club internet provider or account
  - No one wishes to take on the responsibility.
18. The Responded submitted that the Appellant did not demonstrate to the satisfaction of the Revenue Commissioners that the internet access at the club’s location/responsible parties’ location in REDACTED, Co. Offaly is insufficient to allow access to the internet.

### **Analysis**

19. The sections of S.I. No. 156 of 2012 (5) most relevant to the matter in dispute in this case states that: -

*“(2) Where the Commissioners receive a notification from a specified person in accordance with paragraph (1) or where the Commissioners otherwise consider it appropriate, they may exclude the specified person from the provisions of these Regulations only if they are satisfied that, in all of the circumstances, the specified person could not reasonably be expected to have the capacity to make a specified return or to make a payment of specified tax liabilities by electronic means.*

*“capacity” is defined as sufficient access to the Internet by which either or both a specified return or the payment of any specified liabilities may be made by electronic means and, in the case of an individual, also means not prevented by reason of age or mental or physical infirmity from either or both making a specified return or paying any specified liabilities by electronic means;”*

20. Therefore, under the legislation “capacity” must be judged in terms of (a) sufficient access to internet or (b) prevented by reason of age or infirmity. The Appellant is clearly not prevented by reason of age or infirmity from complying with the mandatory filing regulations.

21. I recognise the Appellant’s views in the matter and I appreciate the difficulties encountered by a small sports club in relation to meeting the same electronic filing requirements as larger employers. Nevertheless, the lack of a computer, internet provider or account is not sufficient grounds for an exemption where they are otherwise available. The Appellant has not proved that access to the internet is insufficient.

22. The PAYE modernisation programme has provided transparency of emoluments, and deductions for employers, employees and for the Revenue. The Club wishes to opt out of its electronic filing requirements in the matter and has outlined its difficulty in meeting these requirements.

### **The Burden of Proof**

23. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see Revenue Commissioners v Doorley [1933] 1 IR 750 and McGarry v Revenue Commissioners [2009] ITR 131.

24. In the High Court case of Menolly Homes Ltd v Appeal Commissioners and another, [2010] IEHC 49, at para. 22, Charleton J. stated:

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

25. Having considered the evidence and facts, the relevant legislation and related case law, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal in respect of its qualification for exclusion from the Mandatory Electronic Filing Requirements.

### **Determination**

26. The Respondent is correct not to grant the exclusion sought by the Appellant since the Appellant has not shown that it could not reasonably be expected to have the capacity for exclusion from the Mandatory Electronic Filing requirements in accordance with S.917EA TCA 1997 (as amended) and S.I. No. 223 of 2011. Accordingly, this Appeal fails.

27. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**5<sup>th</sup> May 2020**