



187TACD2020

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 limited liability company engaged in the design and manufacture of point of purchase displays. The company, subject to section 889 or 894 of the Tax Consolidation Act (TCA) 1997 as amended, was required to make returns and payments by electronic means from 1 June 2011.



4. The Revenue Commissioners in exercise of the powers conferred on them by section 917EA (inserted by section 164 of the Finance Act 2003 (No. 3 of 2003)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) made specific regulations as set out in S.I. 223 of 2011 requiring specified persons to make returns by electronic means.
5. The Appellant has sought relief from the obligations of S.I. 223 of 2011 and requests to be allowed continue to file returns and make payments relating to its obligations under section 889 or 894 of the Tax Consolidation Act (TCA) 1997 as amended in paper format.
6. It is not disputed by the Appellant that without the exclusion, the company is obliged to file returns and make payments electronically subject to the provisions of S.I. 223 of 2011.
7. The Appellant was initially granted an exclusion but following a review in May 2018 the Respondent withdrew the exclusion because it considered that the Appellant did not meet the definition of “capacity” within the Regulations.
8. What is in dispute is whether the Appellant’s request for an exclusion in accordance with the provisions of Regulation 9 of S.I. 223 of 2011 may be permitted.

Legislation

9. 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.*

10. Statutory Instrument No. 223 of 2011 - Tax Returns and Payments (Mandatory electronic filing and payment of tax) Regulations 2011. (relevant extracts included in the Analysis below)

Submissions

11. The Appellant submitted that its director **REDACTED** is unable, for medical reasons, to submit returns and payments electronically.



12. The Appellant further submitted that it has been in business for many years and in all that time it has submitted its returns and payments in paper format.
13. The Appellant submitted the extenuating circumstances that has prohibited its director from engaging electronically with the Respondent.
14. The Respondent submitted that it had undertaken a review of the Appellant's e-filing exemption as part of its PAYE Modernisation project.
15. The Respondent submitted that based on its findings the Appellant did not meet the requirements for an exemption under S.I. 223 of 2011 as the Appellant did not meet the definition of capacity within the Regulation.
16. The Respondent submitted that capacity 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".
17. The Respondent submitted that a different officer had reviewed the decision to withdraw the exclusion and that officer also determined that the Appellant did not meet the definition for capacity.

Analysis

18. S.I. No. 223 of 2011 (6) Companies subject to section 889 or 894 of the Principal Act, required to make returns by electronic means from 1 June 2011.

Notwithstanding Regulation 3 and the Regulations of 2008, where any specified person, being a company within the meaning of section 4 of the Principal Act, is required to make a specified return in accordance with section 889 or 894 of the Principal Act as respects—

- (a) any accounting period, or*
- (b) any other period specified in a notice referred to in section 889 of that Act,*





that specified return shall be made by or on behalf of that specified person by electronic means and in accordance with Chapter 6 of Part 38 of the Principal Act, only as respects a period ending on or after 1 January 2011

19. S.I. No. 223 of 2011 Exclusion of certain specified persons (9) states: -

(1) A specified person may, by notifying the Commissioners in writing, request to be excluded from the provisions of these Regulations on the grounds that the specified person does not have the capacity to make a specified return or pay the specified tax liabilities by electronic means and the notification shall include all information relevant to the consideration by the Commissioners of the request.

(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.

20. S.I. No. 223 of 2011 Right of appeal to the Appeal Commissioners 10 states:-

(1) A specified person aggrieved by a failure of the Commissioners to exclude the specified person from the provisions of these Regulations in accordance with Regulation 9(2) may, by notice in writing to the Commissioners before the end of the period of 30 days beginning with the day on which notice of the decision was given to the specified person, apply to have such specified person's request to be excluded from the provisions of these Regulations heard and determined by the Appeal Commissioners.

(2) On the hearing of an appeal under this Regulation, the Appeal Commissioners shall have regard only to those matters to which the Commissioners may or are required to have regard under these Regulations. (Underlined emphasis added)

21. I recognise the Appellant's director's views in the matter and I appreciate the difficulties encountered by the company in the circumstances where its main



director has difficulty with meeting the requirements of electronic filing and payment of taxes.

22. Nevertheless, the extenuating circumstances of the director of a company cannot overcome the requirements of the legislation in regard the obligations of a company to engage electronically with the Respondent.
23. The Appellant has not proved it lacks the capacity to so engage and being a body corporate has no choice in the filing of returns and the payment of tax by electronic means.
24. The Respondent has so far indulged the Appellant in allowing an exclusion up to May 2018 but the impetus of the PAYE modernisation programme has made it difficult for the Respondent to continue the Appellant's exclusion from the mandatory e-filing requirements of the legislation.
25. The PAYE modernisation programme requires an employer to provide electronic transparency of emoluments, and deductions for employers, employees and for the Revenue. The Appellant 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

26. 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.
27. 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.”





28. 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

29. 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.

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

CHARLIE PHELAN
APPEAL COMMISSIONER
23 OCTOBER 2020

