



65TACD2022

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) in relation to the refusal of an application made to the Revenue Commissioners (“the Respondent”) for exclusion from the Mandatory Electronic Filing requirements to file returns and make payments electronically in accordance with section 917EA of the TCA 1997 and Statutory Instrument (“S.I.”) No. 223 of 2011 - Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2011.
2. By correspondence dated 26 October 2021, the Respondent refused the Appellant’s application for exclusion from the Mandatory Electronic Filing requirements to file returns and make payments electronically.
3. In accordance with the provisions of section 949U of the TCA 1997 and by agreement of the parties, this appeal is determined without a hearing.

Background

4. On 30 Aug 2021, the Appellant received a Notice of Income Tax Registration from the Respondent. The correspondence stated “*You should note that your Income Tax return and payment must be made electronically using ROS..... If you do not have the capacity to make returns and payments electronically, you can apply to be excluded from the obligation to do so. Please see overleaf for exclusion conditions and how to apply.*”
5. On 15 September 2021, the Appellant wrote to the Respondent requesting exclusion from the Mandatory Electronic Filing requirements, on the grounds that he does use the services of an Accountant or an Agent, he does not use Social Media, he has no home broadband and he has only very limited access to the Internet.
6. On 26 October 2021, the Appellant received correspondence from the Respondent refusing the Appellant’s request for exclusion from the Mandatory Electronic Filing requirements, on the grounds that the reasons provided are not valid reasons to satisfy the Respondent, that the Appellant does not have capacity to file electronically and as such, is entitled to an exemption.
7. On 9 November 2021, the Appellant duly appealed the decision of the Respondent to the Commission.

Legislation and Guidelines

8. The legislation relevant to this appeal is set out below as follows:

Section 917EA of the 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;

“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.

(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.

Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2012 (S.I. No. 156 of 2012)

Subsection 2 - Interpretation and General

(1) In these Regulations—

“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 or both making a specified return or paying any specified liabilities by electronic means;

Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2012 (S.I. No. 156 of 2012)

Subsection 5 - Exclusion of Certain Specified Persons

(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.

(3) A decision to exclude a specified person from the provisions of these Regulations by the Commissioners in accordance with paragraph (2) may be made at any time but where a notification has been received from a specified person in accordance with paragraph (1) the decision shall be made within 30 days of receipt of the notification, and the Commissioners shall, in all cases, notify the specified person in writing of the decision.

Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2012 (S.I. No. 156 of 2012)

Subsection 6 - Right of Appeal to Appeal Commissioners

(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 5(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.

Submissions

9. The Appellant submits that he applied to the Respondent for an exclusion from the Mandatory Electronic Filing and Payment of Tax requirements, by letter dated 15 September 2021. He submits that he outlined that he has only limited access to the Internet.

10. The Appellant submits that he has appealed the decision of the Respondent not to exclude him from the Mandatory Electronic Filing requirements on the following grounds:-

- i. I do not use Social Media;
- ii. I have no home broadband;
- iii. I do not own a laptop;
- iv. I do not use the services of an Accountant or an Agent. I file my returns;
- v. The imposition of mandatory electronic filing is unwanted and an unfair burden in all the circumstances.

11. The Appellant submits that "*as a citizen, my request for an exclusion from mandatory electronic filing should have been respected by the Revenue Commissioners*". He submits that he hopes that these grounds are sufficient to overturn the original decision under appeal.

Respondent

12. The Respondent submits that the Appellant is a chargeable person within the meaning of the TCA 1997 and on 30 August 2021, filed a paper Income Tax Return. The Respondent submits that "*a notice was then issued to inform him that he is a mandatory efiler under the provisions of S917EA TCA 1997*". The Respondent submits that following receipt of the Appellant's request for exemption from the Mandatory Electronic Filing requirements, "*the initial caseworker determined that the appellant did not satisfy*

the conditions as set out in SI No 156 of 2012 (5) in relation to capacity and refused the request”.

13. Further, the Respondent submits that “*when the appeal was received the initial caseworker requested that two other Revenue officials review the case independent of each other and make their own determination. Both Revenue officials also determined that the appellant did not satisfy the definition of capacity in order to be exempted from mandatory e-filing.*”

Material Findings of Fact

14. The Commissioner having reviewed the documentation provided makes the following material findings of fact:-

- i. The Appellant is a chargeable person within the meaning of section 959A of the TCA 1997.
- ii. The Appellant is a specified person for the purposes of section 917EA (1) of the TCA 1997.

Analysis

15. The Appellant submits that he should be exempt from the requirements of Mandatory Electronic Filing, due to a lack of access to the Internet. In the Appellant’s Statement of Case, he argues that he does not use social media, does not have home broadband, does not own a laptop and does not use the services of an Accountant or an Agent.

16. In addition, the Appellant argues that the imposition of a requirement to file electronically is unwanted and an unfair burden in all the circumstances. He submits that “*as a citizen, my request for an exclusion from mandatory electronic filing should have been respected by the Revenue Commissioners*”. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (“the Lee decision”), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision

of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

17. The Appellant has sought exclusion from the obligations of section 917EA (4) of the TCA 1997 and S.I. No. 156 of 2012 and requests to be allowed continue to file returns and make payments in paper format.

18. In accordance with section 917EA (4) of the TCA 1997, a person may be excluded from the requirement to file returns and make payments electronically where the Respondent is satisfied that the person could not reasonably be expected to have capacity to do so. Capacity is defined in S.I. No. 156 of 2012 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”.

19. Therefore, under the legislation “capacity” must be judged in terms of (a) sufficient access to the Internet or (b) prevented by reason of age or infirmity. Accordingly, the sole issue to be decided in relation to this appeal is the “*sufficient access to the Internet*” criteria based on the submissions of the Appellant. The Appellant has not argued that he is prevented from complying with the Mandatory Filing Regulations by reason of age or infirmity.

20. In an appeal before the Commission, the burden of proof rests on the Appellant, the taxpayer. This proposition is now well established by case law; for example 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”.

21. Having considered the evidence and facts, the relevant legislation and related case law, the Commissioner determines that the Appellant did not succeed in discharging the burden of proof in this appeal, in respect of his qualification for exclusion from the Mandatory Electronic Filing Requirements. Whilst the Appellant may not have access to the Internet in his own home or own a laptop, there are many other methods by which the Appellant

could access the Internet, such as outside his home in an Internet Café, a Library, a Hotel or through a family member, neighbour or friend. The Appellant has not shown that he is incapable of accessing such public facilities or that it would be unreasonable for him to do so.

Determination

22. The Respondent is correct not to grant an exclusion sought by the Appellant since the Appellant has not shown that he could not reasonably be expected to have the capacity to submit his return electronically, in accordance with section 917EA of the TCA 1997 and S.I. No. 156 of 2012. Accordingly, the Appellant's appeal fails.
23. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Appellant was correct to check to see whether his legal rights were correctly applied.
24. This appeal is hereby determined in accordance with the statutory provisions of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
26 April 2022