AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

80TACD2022

Between

[redacted]

Appellant

and

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") by [redacted] ("the Appellant") against surcharges imposed by the Revenue Commissioners ("the Respondent") for the late filing of financial accounts in the iXBRL format on the Revenue Online System ("ROS"). The total amount of tax at issue is in the sum of €59,040.47.

2. This is a lead appeal and the appeals of [redacted], [redacted] and [redacted] are follower appeals. The parties have agreed that the determination in this appeal will determine the follower appeals as the appeals raise common or related issues.

3. The appeal proceeded by way of a hearing on 11 May 2022.

Background

4. On 23 March 2016, the Appellant filed (via its agent) a corporation tax return ("CT1 form") for the accounting period 1 July 2014 to 30 June 2015. The return was filed electronically on ROS. On the same date, the Respondent issued a notice of self-assessment to the Appellant's agent.

5. On 12 November 2019, following the filing of the Appellant's financial statements, the Respondent issued a Notice of Amended Assessment to the Appellant's agent pursuant to Chapter 5 of Part 41A of the TCA 1997. The only difference between this amended assessment and the notice of self-assessment of 23 March 2016 was the imposition of "surcharge for late submission of returns" in the amount of €30,422.90.

6. The Appellant appealed the amended assessment for 2015 to the Commission on 9 December 2019.

7. On 23 March 2017, the Appellant filed (via its agent) a CT1 form for the accounting period 1 July 2015 to 30 June 2016. The return was filed electronically on ROS. On the same date, the Respondent issued a notice of self-assessment to the Appellant's agent.

8. On 6 September 2017, following the filing of the Appellant's financial statements, the Respondent issued a Notice of Amended Assessment to the Appellant's agent pursuant to Chapter 5 of Part 41A of the TCA 1997. The only difference between this amended assessment and the notice of self-assessment of 23 March 2017 was the imposition of "surcharge for late submission of returns" in the amount of €28,617.57.

9. The Appellant appealed the amended assessment for 2016 to the Commission on 5 October 2017.

Legislation and Guidelines

10. Section 884 of the TCA 1997 provides *inter alia*:

> *(2) A company may be required by a notice served on it by an inspector or other officer of the Revenue Commissioners to deliver to the officer within the time limited by the notice a return of-*

[…]

(aa) such information, accounts, statements, reports and further particulars—

(i)relevant to the tax liability of the company, or

(ii)otherwise relevant to the application of the Corporation Tax Acts to the company,

as may be required by the notice or specified in the prescribed form in respect of the return],

[…]

(2A)The authority under subsection (2) to require the delivery of accounts as part of a return is limited to such accounts, as, together with such documents as may be annexed thereto and such further information, statements, reports or further particulars as may be required by the notice referred to in subsection (2) or specified in the prescribed form in respect of the return, contain sufficient information to enable the chargeable profits of the company to be determined.

[…]

11. Section 917EA of the TCA 1997 provides *inter alia*:

(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.

[…]

(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.

[…]

12. Section 959I of the TCA 1997 provides:

(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.

13. Section 959K of the TCA 1997 provides:

> *In the case of a chargeable person who is chargeable to corporation tax for an accounting period, the return required by this Chapter shall include—*
>
> > *(a)all such matters, information, accounts, statements, reports and further particulars in relation to the accounting period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person under section 884, and*
> >
> > *(b)[…] such information, accounts, statements, reports and further particulars as may be required by the prescribed form.*

14. Section 1084 of the TCA 1997 provides *inter alia*:

> *(1)(b)(ia) where a person who is a specified person in relation to the delivery of a specified return for the purposes of any regulations made under section 917EA delivers a return of income on or before the specified return date for the chargeable period but does so in a form other than that required by any such regulations the person shall be deemed to have delivered an incorrect return on or before the specified return date for the chargeable period and subparagraph (ii) shall apply accordingly,*
>
> *[…]*
>
> *(ii) where a person delivers an incorrect return of income on or before the specified return date for the chargeable period but does so neither deliberately nor carelessly and it comes to the person's notice (or, if he or she has died, to the notice of his or her personal representatives) that it is incorrect, the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period unless the error in the return of income is remedied without unreasonable delay,*
>
> *[…]*
>
> *(2)(a) Subject to paragraph (b), where in relation to a year of assessment or accounting period a chargeable person fails to deliver a return of income on or before the specified*

return date for the chargeable period, any amount of tax for that year of assessment or accounting period which apart from this section is or would be contained in an assessment to tax made or to be made on the chargeable person shall be increased by an amount (in this subsection referred to as "the surcharge") equal to-

[…]

(ii) 10 per cent of that amount of tax, subject to a maximum increased amount of €63,485, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,

[…]

Submissions

15. The Appellant's agent submitted:

i. The Appellant filed its CT1 forms for the accounting periods in question on time. The CT1 form for 1 July 2014 to 30 June 2015 was filed on 23 March 2016, and the CT1 form 1 July 2015 to 30 June 2016 was filed on 23 March 2017. The returns were accurate, as demonstrated by the fact that the only differences between the notices of self-assessment and the subsequent notices of amended assessment were the imposition of the surcharges for late submission of returns.

ii. The Respondent's reason for imposing the surcharge was the failure of the Appellant to comply with the requirement to submit its returns in iXBRL format. However, there was no legislative provision underpinning this requirement, and therefore the Respondent was not entitled to impose a surcharge for the failure to submit returns in iXBRL format.

iii. A number of statutory instruments (including SI 341/2008, SI 223/2011, SI 156/2012, SI 572/2014 and SI 207/2016) set out the requirements for specified persons to pay tax and file returns electronically. However, none of these statutory instruments specify that the electronic returns must be in iXBRL format. While eBriefs and other guidance documents from the Respondent make reference to iXBRL, these do not constitute legislation. In *Revenue Commissioners v. O'Flynn Construction Company Limited* [2011] IESC 47, [2013] 3 I.R. 533, McKechnie J. at

p. 599, quoting McCarthy J. in *Texaco (Ireland) Ltd. V. Murphy (Insp. Of Taxes)* [1991] 2 I.R. 449, emphasised that "*a citizen is not to be taxed unless the language of the statute clearly imposes the obligation.*" The Respondent had the authority to introduce a regulation mandating electronic filing in iXBRL, but had not done so.

iv. In the alternative, if it was the case that the Appellant was obliged to file returns in iXBRL format, section 1084(1)(b)(ii) of the TCA 1997 should have been applied. This provision allows for an exception to the imposition of a surcharge if an incorrect return is delivered neither deliberately nor carelessly and the error in the return of income "*is remedied without unreasonable delay*".

v. During the summer of 2017, the Appellant's agent noticed that the iXBRL accounts for the Appellant had not been filed, and immediately sought to generate the accounts. However, numerous problems were encountered which delayed the filing of the accounts, which related to the fact that the financial statements were based on a United Kingdom dataset and were prepared in sterling rather than euro.

vi. The Appellant's agent liaised with its accounts software support provider over a number of weeks to resolve the problems. In or around August 2017, the iXBRL accounts (for the accounting period 1 July 2015 to 30 June 2016) were eventually generated and the agent attempted to upload the accounts onto ROS. However, further problems were encountered at this stage, and the agent had further engagement with its software support provider. The accounts were successfully uploaded in September 2017.

vii. Regarding the accounts for the accounting period 1 July 2014 to 30 June 2015, the Appellant's agent did not have the precise date when they were submitted, and accepted the evidence of the Respondent that they were submitted by email on 25 January 2018. Due to technical issues these were not in iXBRL format.

viii. In the circumstances, the Appellant's agent made efforts to file the accounts without unreasonable delay and accordingly the provision set out in section 1084(1)(b)(ii) of the TCA 1997 should apply to remove the surcharges.

16. The Respondent submitted:

i. Section 959I of the TCA 1997 provides that under self-assessment, notwithstanding that a notice to file a return was not received, a return under section 884 of the TCA 1997 must be delivered by a chargeable person. Where a company is liable to corporation tax, section 959A of the TCA 1997 obliges the company to file a tax return by the 21st day of the ninth month following the end of the accounting period to which the tax return refers. This date is extended to the 23rd day of the month where the tax return is filed electronically using the Revenue Online System (ROS).

ii. Section 917EA of the TCA 1997 allows the Respondent to require particular taxpayers to submit specified forms electronically. SI 223/2011 stipulated that, as of 1 June 2011, all companies had to submit their returns electronically.

iii. Section 884(2)(aa) of the TCA 1997, introduced by the Finance Act 2012, enabled the Respondent to require a taxable person to file accounts as part of the tax return. As the only format in which accounts could be submitted electronically was iXBRL (Inline eXtensible Business Reporting Language), the introduction of section 884 was effectively the introduction of a requirement to electronically file iXBRL accounts using ROS.

iv. The requirement to file iXBRL accounts was rolled out on a phased basis with the initial requirement being placed on companies dealt with in Large Cases Division (LCD) for accounts with an accounting period of 31 December 2012 or later. Certain large companies outside of LCD were required to file for accounting period ending 31 December 2013, including companies with assets on their balance sheet with a value of more than €4.4 million. The Appellant was dealt with in LCD and also had assets on its balance sheet at 30 June 2015 and at 30 June 2016 with a value of more than €4.4 million.

v. The Respondent grants a concessional period of three months to allow companies who have filed the CT1 form on time to meet their iXBRL filing obligations without penalty. This three-month period applies to accounting periods ending after 1

December 2015. Where the iXBRL accounts are not filed within the concession period, the due date for filing remains the 23rd day of the ninth month following the end of the accounting period.

vi. Where a company does not meet the deadline for filing either the CT1 form or iXBRL accounts, the tax liability of the company will be increased by the application of a late-filing surcharge under section 1084 of the TCA 1997.

vii. The Appellant's iXBRL accounts for the accounting period 1 July 2014 to 30 June 2015 were due to be filed on or before 23 March 2016. A surcharge would not have been imposed if they had been filed by 23 June 2016. However, the iXBRL accounts were not filed. A copy of the accounts were supplied by email on 25 January 2018. Consequently, an amended assessment was issued to include a surcharge of 10% on 12 November 2019.

viii. The Appellant's iXBRL accounts for the accounting period 1 July 2015 to 30 June 2016 were due to be filed on or before 23 March 2017. A surcharge would not have been imposed if they had been filed by 23 June 2017. On its CT1 form, the Appellant had noted, by ticking the iXBRL options box, that it did have a requirement to file accounts in iXBRL format.

ix. Notwithstanding the Appellant's arguments, no effort was made by it to file its accounts electronically in a format other than iXBRL by the specified dates.

x. On 31 March 2017, the Appellant's agent contacted the Respondent requesting an offset of overpaid tax for the accounting period ending June 2016. On 22 April 2017, the Respondent replied that the offset could not be dealt with until the iXBRL accounts had been received. The accounts were filed on 6 September 2017. A surcharge of 10% was automatically applied and an amended notice of assessment issued on 6 September 2017,

xi. The returns filed by the Appellant for the accounting periods ending on 30 June 2015 and 30 June 2016 were "*in a form other than that required*" as set out in section 1084 of the TCA 1997, and therefore the surcharges were correctly applied.

xii. Regarding the technical difficulties encountered by the Appellant's agent in submitting the iXBRL accounts, the earliest communication between the Appellant's agent and its software support provider appeared to be on 28 August 2017, over two months after the concession period for the submission of the accounts.

Material Facts

17. The principal facts were not in dispute between the parties. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

i. The Appellant submitted (via its agent) its CT1 form for the accounting period of 1 July 2014 to 30 June 2015 on 23 March 2016.

ii. The Appellant submitted (via its agent) its accounts for the accounting period of 1 July 2014 to 30 June 2015 by email on 25 January 2018. These accounts were not in iXBRL format.

iii. The Respondent imposed a surcharge of €30,422.90 for late filing of accounts for the accounting period of 1 July 2014 to 30 June 2015.

iv. The Appellant submitted (via its agent) its CT1 form for the accounting period of 1 July 2015 to 30 June 2016 on 23 March 2017.

v. The Appellant submitted (via its agent) its accounts for the accounting period of 1 July 2015 to 30 June 2016 in iXBRL format on ROS on 6 September 2017.

vi. The Respondent imposed a surcharge of €28,617.57 for late filing of accounts for the accounting period of 1 July 2015 to 30 June 2016.

vii. The Appellant's agent contacted the Respondent on 31 March 2017 to request an offset of the tax overpaid for the accounting period of 1 July 2015 to 30 June 2016. The Respondent replied on 22 April 2017 that the offset could not be applied until the iXBRL accounts were submitted.

viii. The earliest evidence of the Appellant's agent discussing the problems with generating the iXBRL accounts for 1 July 2015 to 30 June 2016 is an email dated

28 August 2017. This email references a previous telephone conversation of unknown date.

ix. The Appellant (or its agent) did not notify the Respondent of the difficulties it had encountered with filing the iXBRL accounts for 1 July 2015 to 30 June 2016 before they were submitted on 6 September 2017.

Analysis

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

19. Section 959I of the TCA 1997 obliges every chargeable person to deliver a tax return on or before the specified date. Section 884(2)(aa) of the TCA 1997 was introduced by the Finance Act 2012 and enables the Respondent to require a company to file accounts with its corporation tax return. Section 917EA of the TCA 1997 empowers the Respondent to make regulations requiring specified taxpayers to submit their returns by electronic means. SI 223/2011, titled "Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax)" Regulations 2011, required all companies to file returns electronically commencing 1 June 2011.

20. Consequently, for the accounting periods at issue in this appeal, the Commissioner is satisfied that the Appellant was obliged to file its accounts electronically together with, and in addition to, the CT1 form. The specified date for filing returns electronically using ROS is the 23rd day of the ninth month following the end of the relevant accounting period.

21. For the accounting period 1 July 2014 to 30 June 2015, the deadline to submit the CT1 form and accounts was on or before 23 March 2016. The CT1 form was submitted on time; however, the accounts were submitted on 25 January 2018, when they were sent by email to the Respondent. The Respondent would not have imposed a surcharge if the accounts had been filed by 23 June 2016; however, as they were not, a surcharge

of 10% was imposed. For the accounting period 1 July 2015 to 30 June 2016, the deadline to submit the CT1 form and accounts was on or before 23 March 2017. The CT1 form was submitted on time; however, the accounts were submitted via ROS on 6 September 2017. The Respondent would not have imposed a surcharge if the accounts had been filed by 23 June 2017. However, as they were not, a surcharge of 10% was imposed.

22. The Appellant's agent emphasised that the various regulations do not specifically state that the accounts should be submitted in iXBRL format, and therefore the Respondent is not entitled to require taxpayers to return accounts in this format. However, the Commissioner does not agree that this is the central issue to be determined in this appeal; rather, the question is whether the Appellant complied with its filing obligations and, if not, whether the Respondent was entitled to apply a surcharge. As set out above, the Commissioner is satisfied that the Appellant was obliged to submit its accounts electronically by the specified date, but for both accounting periods at issue, it did not do so. The Commissioner does not agree that the submission of the CT1 form was sufficient in itself to satisfy the Appellant's filing obligations. The fact that the only differences between the notices of self-assessment and the notices of amended assessment were the surcharges for late submission of return does not demonstrate that the submission of the Appellant's accounts was not required. The requirement to file accounts was a statutory one (section 884(2)(aa)) and was in addition to the requirement to file the CT1 form.

23. The Commissioner finds that it is not the case that the Appellant filed its accounts by the specified date but in a format other than iXBRL. Rather, the Appellant did not submit *any* accounts by the specified date. Therefore, the Commissioner is satisfied that the Appellant was in default of its obligations and the Respondent was entitled to impose a surcharge.

24. If the obligation to file accounts is not met, late filing provisions (surcharge and restriction of loss/group relief) will apply irrespective of the timely CT1 filings and tax payments. The appropriate penalty to be applied where the obligations are not met is set out in section 1084(2)(a)(ii) of the TCA 1997 as follows:

"10 per cent of that amount of tax, subject to a maximum increased amount of €63,485, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,"

25. For the accounting period 1 July 2014 to 30 June 2015, the total chargeable tax was €304,229.00. The surcharge imposed for late submission of returns was 10% of the total, i.e. €30,422.90. For the accounting period 1 July 2015 to 30 June 2016, the total chargeable tax was €286,175.75 and the 10% surcharge imposed was €28,617.57. The Commissioner is satisfied that the Respondent was correct in making these assessments for additional tax as a surcharge in accordance with section 1084(2)(a)(ii) of the TCA 1997.

26. Finally, the Appellant's agent argued that, even if the Respondent was entitled to impose a surcharge for the late filing of accounts, section 1084(1)(b)(ii) should be applied to remove the additional charge on the basis that the error in return had been remedied "*without unreasonable delay*".

27. The Commissioner is not satisfied that the Appellant has demonstrated that the failure to submit the accounts on time was remedied without unreasonable delay. In respect of the accounting period 1 July 2015 to 30 June 2016, it was the undisputed submission of the Respondent that it notified the Appellant's agent on 22 April 2017 that the iXBRL accounts would have to be filed on ROS before the request for an offset of overpaid tax could be dealt with. If the accounts had been filed on or before 23 June 2017 (i.e. two months after being notified that the accounts were overdue) no surcharge would have been imposed. However, they were not filed until 6 September 2017. While the Commissioner accepts the evidence of the Appellant's agent that technical difficulties with preparing the iXBRL accounts were encountered which delayed their submission, there is no evidence to show that these problems were notified to the Respondent prior to the submission of the accounts.

28. The Appellant's agent provided less details of the circumstances surrounding the submission of the accounts for the 1 July 2014 to 30 June 2015 accounting period. It appears that technical problems were again encountered with the preparation of these accounts. The iXBRL accounts were not submitted via ROS but instead company accounts were provided by email on 25 January 2018. This was almost 22 months

after the specified date for their filing. In the circumstances, the Commissioner is not satisfied that the Appellant has demonstrated that the late filing of accounts for either accounting period was remedied according to the statutory provision of being without unreasonable delay. Therefore, the Commissioner does not agree that section 1084(1)(b)(ii) can be applied to abate or reduce the assessment for additional tax.

Determination

29. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent is correct in making assessments for additional tax as a surcharge in accordance with section 1084(2)(a)(ii) of the TCA: (i) in the amount of €30,422.90 for the accounting period of 1 July 2014 to 30 June 2015, and (ii) in the amount of €28,617.57 for the accounting period of 1 July 2015 to 30 June 2016. Therefore, those assessments stand.

30. The appeal is hereby determined in accordance with section 949AK 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.

Simon Noone
Appeal Commissioner
23/05/2022