AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

42TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") brought by [redacted] ("the Appellant") under section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997"), against a surcharge imposed by the Revenue Commissioners ("the Respondent") for the late filing of financial accounts in the Inline eXtensible Business Reporting Language ("iXBRL") format on the Revenue Online System ("ROS"), in the amount of €13,350.88 for the accounting period 2022.

2. On 11 November 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. The Appellant (through its tax agent) filed a corporation tax return ("CT1") for the accounting period 2022 on 21 September 2023.

4. On 21 May 2024, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €13,350.88 for the accounting period 2022.

5. On 18 June 2024, the Appellant submitted a Notice of Appeal to the Commission. On 20 June 2024, the Commission sent a copy of the Notice of Appeal to the Respondent. On 11 September 2024, the Respondent objected to the appeal on the ground that it was not an appealable matter. On 1 October 2024, the Commissioner directed both parties to make submissions on whether section 959AF(1A) of the TCA 1997 applied to this appeal, which the Appellant did on 2 October 2024. On 2 December 2024, the Respondent submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:

7. Section 884 of the TCA 1997 provides (among other things):

> *"(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 -*

(a) the profits of the company computed in accordance with the Corporation Tax Act -

(i) specifying the income taken into account in computing those profits, with the amount from each source,

(ii) giving particulars of all disposals giving rise to chargeable gains or allowable losses under the Capital Gains Tax Acts and the Corporation Tax Acts and particulars of those chargeable gains or allowable losses, and

(iii) giving particulars of all charges on income to be deducted against those profits for the purpose of the assessment to corporation tax, other than those included in paragraph (d),

(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."

8. Section 917(EA) of the TCA 1997 provides (among other things):

"(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."

9. 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."

10. 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."

11. Section 959AF(1A) of the TCA 1997 provides:

"(1A) No appeal lies against an assessment or an amended assessment where the sole matter on which the person, on whom the assessment or amended assessment, as the case may be, was made, is aggrieved relates to a surcharge imposed under section 1084(2), other than where that person's ground for the appeal relates to -

(a) a matter referred to in section 1084(1)(b),

(b) the date on which the return of income for a chargeable period was delivered, or

(c) the compliance by that person, on or before the specified return date for the chargeable period, with a requirement -

(i) to prepare and deliver a return under Part 7 of the Finance (Local Property Tax) Act 2012, or

(ii) to pay any local property tax payable under that Act."

12. Section 1084(1)(b) of the TCA 1997 provides (among other things):

"(b)For the purposes of this section -

(i) (I)subject to clause (II), where a person deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or carelessly delivers an incorrect return of income as set out in section 1077F(2), as appropriate, on or before

the specified return date for the chargeable period, the person shall be deemed to have failed to deliver the return of income on or before that date unless the error in the return of income is remedied on or before that date,

(II)clause (I) shall not apply where a person -

(A)deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or carelessly delivers an incorrect return of income as set out in section 1077F(2), as appropriate, on or before the specified return date for the chargeable period, and

(B)pays the full amount of any penalty referred to in any of the provisions referred to in subclause (A) to which the person is liable,

(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,

(ib)where a person delivers a return of income for a chargeable period (within the meaning of section 321(2)) and fails to include on the prescribed form the details required by the form in relation to any exemption, allowance, deduction, credit or other relief the person is claiming (in this subparagraph referred to as the "specified details") and the specified details are stated on the form to be details to which this subparagraph refers, then, without prejudice to any other basis on which a person may be liable to the surcharge referred to in subsection (2), 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 and to have delivered the return of income before the expiry of 2 months from that specified return date; but this subparagraph shall not apply unless, after the return has been delivered, it had come to the person's notice or had been brought to the person's attention that specified details had not been included on the form and the person failed to remedy matters without unreasonable delay,

(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,

(iii)where a person delivers a return of income on or before the specified return date for the chargeable period but the inspector, by reason of being dissatisfied with any statement of profits or gains arising to the person from any trade or profession which is contained in the return of income, requires the person, by notice in writing served on the person under section 900, to do anything, the person shall be deemed not to have delivered the return of income on or before the specified return date for the chargeable period unless the person does that thing within the time specified in the notice, and

(iv)references to such of the specified provisions as are applied, subject to any necessary modifications, in relation to capital gains tax by section 913 shall be construed as including references to those provisions as so applied."

13. Section 1084(2)(a) of the TCA 1997 provides:

"(*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 -*

(i) 5 per cent of that amount of tax, subject to a maximum increased amount of €12,695, where the return of income is delivered before the expiry of 2 months from the specified return date for the chargeable period, and

(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,

and, except where the surcharge arises by virtue of subparagraph (ib) of subsection (1)(b), if the tax contained in the assessment is not the amount of tax as so increased, then, the provisions of the Tax Acts and the Capital Gains Tax Acts (apart from this section), including in particular those provisions relating to the collection and recovery

of tax and the payment of interest on unpaid tax, shall apply as if the tax contained in the assessment to tax were the amount of tax as so increased."

Submissions

Appellant

14. In its Notice of Appeal, the Appellant stated (among other things):

"*The company submitted their Corporation Tax return, form CT1 on 21 September 2023 for the financial year ended 31 December 2022.*

Due to a breach of thresholds, the company was obliged to submit financial statements via xbrl format, being a digital format of income and expenditure and balance sheet. However, upon submitting the CT1 an xbrl file was generated, but was not accepted by Revenue's online platform ROS.

The tax agent was unaware that the submission did not successfully completed due to an incompatible file.

In May 2024, [redacted] *it transpired that the financial statements were outstanding and the agent ran a new xbrl file which was then successfully uploaded.*

Thereafter an amended notice of assessment was issued for Corporation Tax. including a surcharge for late filing.

The company is 100% tax compliant in all aspects of their filing obligations. Taxes are filed and paid on a timely basis.

The company is not a regular defaulter of taxes.

The CT1 was submitted on time and the tax was duly paid, there was no loss to the exchequer.

It is understood that the CT1 is deemed to be incomplete were the xbrl file has not been submitted. However, the client had a genuine attempt to complete their CT1 obligations and paying their liability.

The matter of the xbrl file not being uploaded at the time of filing the CT1 in September 2023 was a genuine error.

In addition to the surcharge. the company has had its tax clearance certificate rescinded.

In the circumstances where there is no loss to the exchequer and there was a genuine attempt by the company to complete their CT obligations, and the company having a consistently compliant tax record, the refusal of Revenue to retract the surcharge following an explanation as to how the xbrl financial statements were not submitted appears heavy handed and unnecessary."

15. On the question of whether section 959AF(1A) applies to this appeal, the Appellant submitted:

"*We believe our appeal is valid, as the return was filed on the filing due date, the liability assessed on the return was remitted on the due date and the tax compliance of the tax payer is of an exemplary standard.*

As per our appeal the company is 100% tax compliant. All returns are filed on time every time. There is no history of accumulated liabilities. The penalty appears unreasonable for an honest mistake. There is no loss to the exchequer. The CT liability was paid at the time of filing. As above this was an honest mistake due to technical difficulties preparing the accounts in an xbrl format.

We are appealing to Revenue for reasonableness in this matter and to consider the above points and the company's tax compliance history and waive the penalty."

Respondent

16. In its Statement of Case, the Respondent submitted (among other things):

"*The Appellant filed their 2022 Corporation Tax return (CT1) on 21 September 2023. The return indicated a tax liability of €133,508.87 which they had already paid to Revenue prior to filing their return. As part of their return the Appellant elected to file their Financial Statements in iXBRL format.*

The Appellant filed their financial statements on 21 May 2024 which resulted in a Revenue Assessment being raised to apply a 10% late filing surcharge in the amount of €13,350.88. It is this surcharge that is the matter under appeal.

In their Notice of Appeal, the Appellant's representative states that they generated the Appellant's financial statements and had thought it had uploaded but due to technical issues it was not accepted by Revenue's Online Service (ROS). The Appellant's representative became aware in May 2024 it had not uploaded at which

time they uploaded it. The representative adds that they understand that the CT1 is deemed to be incomplete where the financial statements have not been provided but asks that the surcharge be removed given the issues they had and the Appellant's compliance record.

The filing deadline for a CT1 return for the period 1 January 2022 to 31 December 2022 is the 23 September 2023. A Corporation Tax return is deemed to be incomplete where the financial statements have not been filed. Revenue allows for the filing of the financial statements either –

before the filing of the Form CT1,

at the same time as the filing of the CT1; or

within 3 months after the due date for filing the CT1.

Therefore, the Appellant had until 23 December 2023 to file their financial statements. While the CT1 return was filed by the Appellant before this deadline the financial statements were not. […]

The Appellant's financial statements were filed on 21 May 2024 and as this is clearly after the filing deadline of 23 December 2023, a late filing surcharge of 10%, as provided by legislation, has been added to the Appellant's tax liability for the period 1 January 2022 to 31 December 2022.

The appeal of a late filing surcharge is not an appealable matter – Section 954AF(1A) of TCA 1997 refers.

Revenue believes that the matter under appeal is not appropriate for consideration by the Tax Appeals Commission as provided in legislation."

Material Facts

17. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

    17.1. On 21 September 2023, the Appellant filed a CT1 on ROS for the accounting period 2022.

    17.2. The Appellant filed accounts in iXBRL format for the accounting period 2022 beyond the filing deadline.

17.3. On 21 May 2024, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €13,350.88 for the accounting period 2022.

17.4. On 18 June 2024, the Appellant submitted a Notice of Appeal to the Commission.

Analysis

18. This appeal relates to a surcharge imposed by the Respondent on the Appellant for the tax year 2022. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to impose the surcharges. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

> *"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. A preliminary issue arises in this appeal as to whether the appeal should be refused on the ground that it does not relate to an appealable matter. It is therefore appropriate for the Commissioner to address this question first.

Whether this appeal relates to an appealable matter

20. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. Section 949J of the TCA 1997 states that an appeal shall be valid if "*it is made in relation to an appealable matter*".

21. Section 949A of the TCA 1997 defines an "*appealable matter*" as "*any matter in respect of which an appeal is authorised by the Acts*". Therefore, in order for an appeal to be valid, it must be a matter in respect of which an appeal is authorised by the Tax Acts. The Commission does not have a general or residual power to hear appeals into matters where no appeal is authorised by the Tax Acts.

22. The Commission's jurisdiction was considered by the Court of Appeal in the case of *Lee v Revenue Commissioners* [2021] IECA 18, in which Murray J stated that:

> "*The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any*

kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation".

23. It follows from the above that for an appeal to be a valid appeal that may be accepted by the Commission, there must exist some provision in legislation conferring on a taxpayer the right to appeal a specific decision to the Commission. The Commission does not have a general power to hear appeals into matters where no appeal is authorised and the Commission does not have a supervisory jurisdiction in respect of the conduct of the Respondent's officials.

24. Section 959AF(1) of the TCA 1997 provides a right of appeal in respect of assessments or amended assessments. Section 959AF(1A) provides that no such right of appeal lies against the imposition of a surcharge under section 1084(2), unless one of three prescribed exceptions applies**.** In this appeal, there is no dispute that the Respondent imposed a surcharge under section 1084(2) of the TCA 1997. Accordingly, to determine whether the Appellant has a right to appeal that surcharge, the Commissioner must consider whether any of the three prescribed exceptions applies.

25. The first exception is where the appeal relates to a matter referred to in section 1084(1)(b) of the TCA 1997. Section 1084(1)(b) contains a number of provisions concerning circumstances where an incorrect return has been filed on or before the specified return date. The second exception is where the appeal relates to the date on which the return of income for a chargeable period was delivered. The third exception is where the appeal relates to returns for local property tax, which is not relevant in this appeal.

26. The Appellant's submissions stated: "*We believe our appeal is valid, as the return was filed on the filing due date*". The Commissioner therefore considers that irrespective of whether that submission is correct (which the Commissioner addresses below), the appeal "relates to", or has a connection with, matters referred to in section 1084(1)(b) and/or the date of delivery of the return.

27. Given this, the Commissioner is satisfied to proceed on the basis that the Appellant's appeal relates to an "appealable matter", on the ground that it falls within an exception provided for in section 959AF(1)(A) of the TCA 1997.

Filing Obligations

28. 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 enables the Respondent

to require a company to file accounts with its corporation tax return. Section 959K of the TCA 1997 provides that the return required for Corporation Tax purposes shall include information that would be contained in a return delivered under section 884, which includes "*such information, accounts, statements, reports and further particulars*" as required by the CT1. 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 from 1 June 2011. Consequently, the Commissioner is satisfied that the Appellant was obliged to file its accounts for the accounting period 2022 electronically in addition to filing the CT1 return.

29. Section 959A of the TCA 1997 provides that 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. For completeness, the Commissioner notes the Respondent's reference in its Statement of Case to allowing the filing within three months after the due date for filing of the CT1. The Commissioner understands this to refer to the Respondent's administrative practice of allowing for the filing of accounts in iXBRL format within three months after the due date for filing the CT1, as set out in the Respondent's Tax and Duty Manual Part 41A-03-01. As the Appellant did not file electronic accounts within that three month time-frame, this point does not arise for further consideration in this case. Section 1084(2)(a) of the TCA 1997 provides for the imposition of surcharges for late return where a chargeable person fails to deliver a return on or before the specified return date.

30. Both the Appellant and the Respondent stated that the Appellant filed a CT1 on ROS for the accounting period 2022 on 21 September 2023, which the Commissioner has found to be a material fact.

31. The accounting period at issue in this appeal was 2022. Accordingly, the accounts were due to be filed electronically on or before 23 September 2023. The Respondent submitted that the iXBRL accounts for 2022 were filed beyond the deadline. The Appellant has not disputed this fact, which the Commissioner has found to be a material fact. In summary, the Appellant submitted that it was unaware that the iXBRL files had not uploaded, it made a genuine attempt to file its CT return, and made a genuine and honest error.

32. In circumstances where the Appellant did not file its accounts for 2022 electronically on or before the specified return date, the Commissioner finds that the Respondent was entitled to impose a surcharge under section 1084 of the TCA 1997.

33. Section 1084(2)(a)(ii) of the TCA 1997 provides that a surcharge is to be applied 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,*". The notice of amended assessment which the Respondent issued on 21 May 2024 for the accounting period 2022 showed an amount of tax chargeable to be €133,508.87 and the surcharge for late submission of returns to be €13,350.88 i.e. 10% of the total. The Commissioner is satisfied that the Respondent was correct in imposing that surcharge, under section 1084(2)(a)(ii) of the TCA 1997.

34. The Commissioner does not consider that the provisions of section 1084(1)(b) apply, for the following reasons:

    34.1. The Appellant did not file electronic accounts for the accounting period 2022 on or before the specified return date and the question of an error in the return having been corrected on or before the specified return date does not arise, for the purposes of section 1084(1)(b)(i).

    34.2. The Commissioner does not find that the Appellant delivered a return in a form "*other than that required by regulations*" for the purposes of section 1084(1)(b)(ia). Rather, the Commissioner finds it to be the case that while the Appellant filed a CT1 for the accounting period 2022 on time, it did not file <u>any</u> accounts for those accounting periods on or before the specified return date. Accordingly, this is not a case where the Appellant is deemed to have delivered an incorrect return on or before the specified return date, such that section 1084(1)(b)(ii) would apply.

    34.3. This is not a case where there was an alleged failure to include details in relation to an exemption, allowance etc. such that section 1084(1)(b)(ib) applies.

    34.4. This is not a case where a notice in writing has been served under section 900 such that section 1084(1)(b)(iii) applies.

35. The Commissioner acknowledges the circumstances which the Appellant outlined in its submissions. In particular, the Commissioner notes reference to the fact that it was a genuine and honest error, as well as the appeal to the Respondent for reasonableness in light of a history of tax compliance by the Appellant. The Commissioner appreciates the Appellant's frustration in this respect. However, the Commissioner has no supervisory jurisdiction over the Respondent's procedures or over the conduct of the Respondent's officials.

36. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the circumstances outlined on appeal. The Appellant was entitled to check whether the imposition of a surcharge by the Respondent was correct. However, for the reasons set out above, the Commissioner is satisfied that the Respondent was correct to impose a surcharge on the Appellant.

Determination

37. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to impose surcharges for the accounting period 2022.

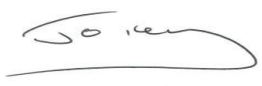
38. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

39. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

40. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny
Appeal Commissioner
16 January 2025