



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

07TACD2026

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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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 by ██████████ (“the Appellant”) against a Notice of Amended Assessment for the income tax year 2023 issued by the Revenue Commissioners (“the Respondent”) on 1 April 2025.
2. The appeal concerns a dispute between the parties in relation to the date upon which the Appellant’s 2023 income tax return (“the Form11”) was filed on the Respondent’s Revenue Online Services (“ROS”). The Appellant contends ██████ filed the Form11 and ██████ Statement of Net Liabilities (“the SoNL”) on ROS before the 2023 income tax pay and file deadline (14 November 2024). The Respondent contends that the Form11 was filed on 1 April 2025, on ROS, which was more than two months after the pay and file deadline. Therefore, a late filing surcharge was applied in the Notice of Amended Assessment.
3. On 3 April 2025, the Appellant duly appealed to the Commission by submitting ██████ Notice of Appeal. On 26 June 2025, the Appellant submitted a Statement of Case (“SoC”) building on ██████ Notice of Appeal. On 13 June 2025, the Commission received the Respondent’s SoC. On 24 July 2025, the Commission received the Book of Documents compiled by the Respondent on behalf of both parties, and an outline legal submission on behalf of the Respondent. On 13 November 2025, following a direction from the Commissioner pursuant to section 949E of the TCA 1997, the Respondent provided information to the Commission on the operation of the income tax pay and file process on ROS and confirmed it had completed a technical review of the Appellant’s case.
4. The Commissioner has considered all submissions received from both parties and the relevant legislation in making this determination.
5. In accordance with the provisions of section 949U of the TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing.

Background

6. The Appellant states that ██████ discharged ██████ 2023 pay and file obligations by both paying the tax due and filing the Form11 on ROS on 11 July 2024. On 11 July 2024, the Appellant paid the income tax computed on the SoNL using the online payment process available through ROS. The amounts paid were the balance of the 2023 income tax payable (€311) and the 2024 preliminary tax liability (€1,653).

7. The Respondent received the SoNL on ROS on 11 July 2024. The Respondent states that the Form11 was not filed until 1 April 2025, over four months after the pay and file deadline (14 November 2024).
8. On 20 September 2024, the Respondent issued correspondence titled "Prompt for Action" to the Appellant on ROS to pay and file for the 2023 tax year. The Appellant states ■■■ did not act on this prompt as ■■■ believed ■■■ had completed the 2023 pay and file process in July 2024, and therefore ■■■ concluded no further action was required on ■■■ part.
9. On 30 January 2025, the Respondent issued a letter to the Appellant, via the ROS Revenue Record, titled "IMPORTANT NOTICE Reminder to file – Income Tax Return". The letter stated the Respondent's records showed that the Appellant had not filed the Form11 and requested that the return be filed immediately on ROS.
10. On 11 February 2025, the Appellant sent an email via the Respondent's MyEnquiries service ("MyEnquiries") requesting clarification. The Respondent did not reply to the Appellant's email.
11. On 31 March 2025, the Appellant sent a second email via MyEnquiries seeking clarification from the Respondent. On 1 April 2025 the Respondent replied to the Appellant stating that the balancing tax payment for 2023 and the preliminary tax payment for 2024 had been received, but the Form11 was not on record.
12. On 1 April 2025, the Appellant filed the Form11 on ROS. Prior to submission of the Form11, the Appellant amended the pre-populated self-assessment panel (column B) by deleting the surcharge amount pre-populated by the ROS system. The Appellant did not provide an explanation for the deletion of the surcharge in the explanation box that is provided in the Form11 for such matters.
13. On 1 April 2025, following receipt of the Form11 earlier that day, the Respondent issued a Notice of Amended Assessment stating the "*amount of tax payable for this period*" to be €1,653.95, the "*amount of surcharge due under section 1084 because of the late filing of the return*" to be €165.39 and the "*balance of tax payable for this period*" to be €166.34.
14. The Notice of Amended Assessment issued by the Respondent was an "*amended*" assessment as the self-assessment panel (column B) on the Form11 submitted by the Appellant did not contain the late filing surcharge.
15. On 3 April 2025, the Appellant paid the balance of tax payable as stated in the Notice of Amended Assessment in the amount of €166.34.

16. On 13 June 2025, the Respondent notified the Appellant that it was reducing the surcharge from 10% to 5% on a concessional basis.

17. The Book of Documents included copies of a number of emails between the Appellant and the Respondent dated between 13 June 2025 and 21 July 2025 wherein the Appellant restated ■■■ had filed the Form11 return on 11 July 2024, and queried if the return could have been lost, deleted or inadvertently moved on the Respondent's ROS system. The Respondent replied to the Appellant's emails stating that the Form11 was not on record until it was filed on 1 April 2025. In its email on 21 July 2025 the Respondent stated:

“Once the final step 'Sign&Submit' is completed when filing the return, the return is remitted to Revenue, the system issues confirmation number, and from then it is not possible to delete the return on ROS, inadvertently or otherwise.”

18. There is no dispute between the parties on the following matters:

18.1. The amounts of gross income and tax credits included in the Form11 submitted on 1 April 2025 and the Notice of Amended Assessment issued on 1 April 2025.

18.2. The date of filing of the SoNL (11 July 2024) and the accuracy of the tax payable amounts stated therein.

18.3. The amount of tax paid by the Appellant, of foot of the SoNL, on 11 July 2024.

Legislation and Guidelines

19. Section 1084(2)(a) of the TCA 1997 provides for a late filing surcharge when an income tax return is filed after the pay and file deadline. The legislation states:

“[...] 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,

[...]"

20. For the purposes of section 1084(2)(a) of the TCA 1997, the term "specified return date for the chargeable period" is defined in section 959A of the TCA 1997 as follows:

"[...] in relation to a tax year for income tax [...] purposes, 31 October in the tax year following that year [...]."

21. Section 959AF of the TCA 1997 provides for the appeal of the late filing surcharge levied under section 1084(2) of the TCA 1997 where the ground of appeal relates to the date on which the return was filed. The legislation states:

"(1) Subject to subsection (1A), a person aggrieved by an assessment or an amended assessment, as the case may be, made on that person may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment.

(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—

[...]

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

[...]"

22. Pursuant to an extra-statutory concession, the Respondent provides an extension to the income tax pay and file deadline where taxpayers use ROS to pay their tax liability and file their Form11. The extended deadline for the 2023 income tax pay and file process was set by the Respondent as 14 November 2024. As the Appellant both paid the income tax and filed the Form11 through ROS, the extended pay and file deadline of 14 November 2024 is the deadline applicable in ■■■ case.

23. 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.

Submissions

Appellant's submissions

24. The Appellant submitted the following grounds of appeal in ■■■ Notice of Appeal:

"I always make my tax returns and pay all income tax due well in advance of the required date.

In July 2024 I completed my form 11 for 2023. Based on your assessment, I paid the required amount of income tax €1653 due for 2023 plus the preliminary amount €1653 for 2024, I received a receipt from you showing my payments. My submission of form 11 and payment was made well in advance of the required date of end of October 2024.

On 1 April 2025 Revenue.ie have stated that whilst the payments were received on time, "the 2023 form 11 is not on record". I don't know why "the 2023 form 11 is not on Record" but I don't believe it was any failure on my part to submit it,

You have charged me a penalty surcharge of €166.34 because you state "the 2023 form 11 is not on record".

I can understand being charge a penalty if I had not paid my income tax, but as I had paid it in full well in advance, I obviously was not attempting to avoid payment and I believe this is a glitch on your system

I am appealing against this surcharge as my form 11 was completed and all income tax due paid well in advance of the required date.

I have paid the €166.34 surcharge but I believe this should be reimbursed to me."

25. In ■■■ SoC the Appellant submitted that the Form11 was filed on 11 July 2024, at the same time as the submission of the SoNL. Furthermore, the Appellant stated:

"On 20 September 2024 I received a Prompt for Action, which stated "If you have already filed and paid (or you have made arrangements to pay), thank you and you can disregard this notice." As I had already paid, as per the instructions, I disregarded this notice.

Because I had received the 'Statement of Net Liabilities' and paid in full my tax liability for 2023 and paid my preliminary payment for 2024, and received receipts

from Revenue.ie, I had every reason to believe that my tax liabilities for 2023 were fully satisfied.

On 30 January 2025, Revenue wrote stating I had not filed my income Tax Return for 2023.

I checked my records, and having received receipts that all money due had been paid, on 11 February 2025, I wrote to Revenue via 'My Enquiries' for clarification.

Revenue did not respond to my Enquiry.

On 31 March 2025 I again wrote to Revenue, via 'My Enquiries' reminding them they had not responded to my enquiry dated 11 February 2025 and again asking for clarification,

On 1 April 2025 Revenue responded that whilst they had received payment for Income Tax for 2023 and preliminary tax for 2024, "Form 11 is not on Record".

On 1 April 2025 I resubmitted Form 11 for 2023.

On 1 April 2025 Revenue issued me an Amended Statement of Assessment for 2023 charging me a surcharge of €166.34 for 'late filing of return'.

On 2 April 2025, although I dispute this surcharge, I paid the €166.34 because I always pay any demands for Income Tax immediately and I was frightened not to.

However, I believe that any failure of the return to be 'on record' was due to an error on the ROS system or by Revenue.ie, and not failure on my part to submit my Income Tax return on time.

[...]

The history of my income tax returns and payments for the past 5 years [...] shows I always submit my Income Tax Return and pay my income tax well ahead of time, and 'Statement of Net Liabilities' is only issued after the relevant Income Tax return (form 11) is submitted. [...] A 'Statement of Net Liabilities' can surely only be issued after Revenue.ie have received a submission of form 11, in order for Revenue.ie to calculate the amount of income tax due. How were Revenue.ie able to calculate the amount of income tax due if they had not (as they claim) received my income tax return (form 11)?

[...]

From my experience, records on ROS are not always accurate. Additionally Revenue does not always reply to enquiries. [...]

I am a [REDACTED] with limited resources and limited knowledge of the accounting system up against a huge organisation of virtually unlimited financial resources and tax expertise which puts me at a great disadvantage. I am law abiding, I pay all my taxes in full and on time. However, whilst I believe I fulfilled all my tax obligations to the letter, I paid the surcharge of €166.34, purely to prevent further stress to myself and stop the clock ticking and stop myself being penalised with further charges and penalties. (Although in fact, having paid the surcharge of €166.34 Revenue have now reduced it to €82.69.) I believe I am now in the difficult situation in which I am being penalised because somehow a glitch in the system or accidental removal caused a form to disappear from Revenue's records (although Revenue were able to extract the information from it, prior to removal, and use it to calculate my tax liability which was paid immediately)."

26. In addition to [REDACTED] Notice of Appeal and SoC, the Appellant submitted the following documents to the Commission:
- 26.1. A screenshot of the Appellant's Tax Clearance Application Result ("the Tax Clearance") obtained via ROS on 28 April 2025, confirming the Appellant's tax affairs were in order as at that date.
- 26.2. A screenshot of the Appellant's ROS Revenue Record as of 7 July 2025, confirming that the SoNL was filed and the income tax payment was made on 11 July 2024 and the Form11 was filed on 1 April 2025.

Respondent's submissions

27. In its SoC the Respondent submitted that the Form11 was filed on 1 April 2025 and, as this was more than two months after the filing deadline, a 10% late filing surcharge was applied in accordance with section 1084(2)(a) of the TCA 1997. In its SoC the Respondent quoted Part 47-06-08 of its Tax and Duty Manual as follows:

"Calculation of the surcharge

The surcharge is a percentage of the total tax payable for the year of assessment or accounting period (in the case of income tax, after credit for PAYE already paid) for which the return is late. The percentage amount is set according to the length of the

delay in filing. The amount of the surcharge is also subject to an overall cap. The surcharge is calculated as follows: [...]

5% of the tax liability for the year of assessment or accounting period to which the tax return relates, subject to a maximum of €12,695, where the tax return is delivered within two months of the filing date.

10% of the tax liability for the year of assessment or accounting period to which the tax return relates, subject to a maximum of €63,485, where the tax return is not delivered within two months of the filing date.”

28. On 24 July 2025, the Respondent submitted the Book of Documents and its Outline Legal Submission for this appeal.
29. On 13 November 2025, of foot of the direction issued by the Commissioner, the Respondent submitted additional information in reply to the Commissioner’s questions on the operation of the income tax pay and file system in ROS. In that submission the Respondent stated:

[...]

Following a comprehensive review from our technical department, we can confirm that the Appellant submitted Statement of Net Liabilities with the payment, in respect of 2023 Income tax on 11/07/2024, without return submission.

[...]

I can confirm that it is possible to submit a Statement of Net Liabilities (SNL) with a Payment without filing the Return.

[...]

[...] the Statement of Net Liabilities (SNL) can be submitted when filing the return [...]. However, it is also possible to file a SNL without filing an Income Tax Return.

If the customer chooses to make a payment for the Income tax period where the Statement of Net Liabilities (SNL) has not yet been submitted, then they are presented with the SNL to submit, when selecting the payment option. The filer does not have to submit the Income Tax Return, or Form 11 at the same time if they choose not to.

In this case the taxpayer filed a preliminary tax payment only on the 11/07/2024, and on filing the preliminary tax payment, the SNL was presented, and taxpayer then filed the SNL without submitted or filing an Income Tax Return, Form 11.

[...]

The appeal relates to the tax year 2023. The Appellant filed the original Income Tax return, Form 11 on the 01/04/2025. At the time of filing this return, the Form 11 was already more than two months late. When filing this Form 11 return, an assessment automatically computed the surcharge at 10% of the tax payable under Column A of the Self-Assessment, being the Revenues Assessment and computation. The taxpayer has an option to overwrite this assessment by entering their own computation in Column B, prior to submitting the tax return. On review, I can confirm that the filer input figures on Column B, which agreed with the Revenue tax calculation figures in Column A, with the exception of the late filing surcharge. The taxpayer amended the late filing surcharge figure [...] in Column B to €0, thereby reducing the balance payable by the 10% surcharge amount.

The Revenue system did not issue a Chapter 4, Notice of Assessment at this point. Where the late filing surcharge figure is amended in Column B, by the taxpayer or filer who otherwise agrees with the tax computation, the tax return is suspended on the Revenue system, and a Notice of Assessment, Chapter 4 will not issue in these circumstances. Instead the system will hold the return for a manual review of the late filing surcharge in Column B. In this case, following a review, on the same date, 01/04/2025, Revenue reinstated the 10% late filing surcharge amount.

The Notice of Amended Assessment, Chapter 5, being the Revenue 'Amended Assessment' then issued to the taxpayer on the 01/04/2025."

Material Facts

30. Having reviewed all submissions from both parties, the Commissioner makes the following findings of material fact:
 - 30.1. The Appellant is subject to the self-assessment income tax pay and file system.
 - 30.2. The Appellant used ROS to pay and file ■■■ income tax for 2023.
 - 30.3. On 11 July 2024, the Appellant filed a SoNL via ROS and instructed the payment, via ROS of the balance of the 2023 income tax payable (€311) and the 2024 preliminary tax (€1,653).
 - 30.4. There is no documentary evidence to support the Appellant's contention that ■■■ filed ■■■ 2023 income tax return (Form11) on 11 July 2024.
 - 30.5. It is possible within the ROS pay and file system to file a SoNL and make tax payments without filing the related income tax return at the same time.

- 30.6. On 11 July 2024, the Respondent confirmed receipt of the SoNL and the tax payment by issuing confirmations of these documents to the Appellant's ROS Revenue Record.
- 30.7. On 20 September 2024, the Respondent issued correspondence titled "Prompt for Action" to the Appellant via ROS for the 2023 income tax return (Form11) to be filed and any outstanding income tax liability for 2023 to be paid.
- 30.8. On 30 January 2025, the Respondent issued a letter to the Appellant's ROS Revenue Record, titled "IMPORTANT NOTICE *Reminder to file – Income Tax Return*" reminding the Appellant to file the 2023 income tax return.
- 30.9. On 11 February 2025, the Appellant emailed the Respondent via MyEnquiries seeking clarification of the Respondent's letter of 30 January 2025. The Respondent did not reply to the email.
- 30.10. On 31 March 2025, the Appellant sent a second email to the Respondent via MyEnquiries requesting clarification of the Respondent's letter of 30 January 2025.
- 30.11. On 1 April 2025, the Respondent replied to the Appellant, via MyEnquiries, stating that the Form11 was not on record.
- 30.12. On 1 April 2025, the Appellant filed the Form11 on ROS.
- 30.13. Following receipt of the Form11, on 1 April 2025, the Respondent issued a Notice of Amended Assessment for the 2023 tax year.
- 30.14. The Notice of Amended Assessment dated 1 April 2025 included a 10% surcharge of €165.39 and stated the balance of tax payable for 2023 was €166.34.
- 30.15. On 3 April 2025, the Appellant paid the Respondent the balance of tax payable for 2023 (€166.34).

Analysis

Burden of proof

31. The appropriate starting point for this analysis is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. 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 paragraph 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”.

32. The Commissioner also considers it useful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute [...]”

The Form11 filing date

33. The Appellant has appealed the Notice of Amended Assessment dated 1 April 2025 issued by the Respondent. There is no dispute on the income, deductions, tax credits or income tax paid amounts in the assessment. The dispute has arisen solely on the inclusion of the late filing surcharge due to the disagreement between the parties on the filing date of the Form11.
34. The Appellant submits that ■■■ filed the Form11 and paid all tax due on 11 July 2024 and, as this was prior to the income tax pay and file deadline a late filing surcharge should not have been included in the Notice of Amended Assessment issued on 1 April 2025.
35. The Respondent submits that the Appellant filed the Form11 on 1 April 2025 and, as this was more than two months after the filing deadline, a 10% late filing surcharge applies in accordance with section 1084(2)(a) of the TCA 1997.
36. It is for the Appellant to prove, on the balance of probabilities, that the Form11 was filed before the pay and file deadline (14 November 2024).
37. The Appellant stated in ■■■ Notice of Appeal and SoC that ■■■ filed the Form11 on 11 July 2024. Furthermore, the Appellant submitted documents to support this statement and each of these documents is analysed below.
38. The Appellant submitted a screenshot of the Tax Clearance dated 28 April 2025 showing that the Appellant’s tax affairs were in order at that date. The Tax Clearance date falls after the Form11 was filed (1 April 2025) and after the Appellant paid the balance of tax due on foot of the Notice of Amended Assessment (3 April 2025). Therefore, the Commissioner finds that the Tax Clearance does not of itself provide support for the Appellant’s contention that the Form11 was filed on 11 July 2024.

39. The Appellant submitted a screenshot of ■■■ ROS Revenue Record as of 7 July 2025. The screenshot shows that the SoNL was filed on 11 July 2024, and that tax payments were made on that date. The screenshot shows the Form11 was filed on 1 April 2025. The Commissioner is satisfied that this screenshot does not show any record of the Form11 being filed on 11 July 2024 or indeed on any date prior to the pay and file deadline (14 November 2024). Therefore, the Commissioner finds that this screenshot does not support the Appellant's contention that the Form11 was filed before the pay and file deadline.
40. The Appellant did not submit a copy of the Form11 that ■■■ contends was filed on 11 July 2024.
41. The Commissioner notes the Respondent's email reply to the Appellant on 21 July 2025 wherein it stated that when a Form11 is filed on ROS a unique ROS notice number is issued and a copy of the Form11 is made available in the ROS Revenue Record. In that email the Respondent stated that it is not possible within the ROS system for a Form11, once filed on ROS, to be lost, deleted or inadvertently moved elsewhere within the ROS system.
42. The Commissioner notes the Respondent's submission to the Commission on 13 November 2025 wherein the Respondent confirmed its technical department had conducted a review. The Respondent stated therein:
- "[...] we can confirm that the Appellant submitted Statement of Net Liabilities with the payment, in respect of 2023 Income tax on 11/07/2024, without return submission.*
- [...]*
- I can confirm that it is possible to submit a Statement of Net Liabilities (SNL) with a Payment without filing the Return.*
- [...]*
- [...] the Statement of Net Liabilities (SNL) can be submitted when filing the return [...]. However, it is also possible to file a SNL without filing an Income Tax Return."*
43. The Commissioner is satisfied that the standard ROS procedure produces a ROS notice number for each filing made on ROS during the income tax pay and file process, including the filing of the Form11. Furthermore, the Commissioner is satisfied that, when a ROS notice number is issued for a filing on ROS, the standard ROS procedure is that a copy of that filing becomes available in the ROS Revenue Record and the copy can be viewed at any time, downloaded and saved locally by the taxpayer.

44. Therefore, the Commissioner is satisfied that, if the Form11 had been filed by the Appellant on 11 July 2024, as has been contended by the Appellant, the standard ROS pay and file process would have produced a ROS notice number for that filing and a copy of the Form11 would have become available in the Appellant's ROS Revenue Record on 11 July 2024.
45. Having considered all submissions from both parties, the Commissioner finds that the Appellant has not provided proof that, on the balance of probabilities, the Form11 was filed on 11 July 2024 or on any other date up to and including the 2023 pay and file deadline (14 November 2024).
46. Furthermore, the Commissioner finds that the Form11 was filed on 1 April 2025, more than two months after the 2023 income tax pay and file deadline (14 November 2024).

Late filing surcharge

47. Following on from the analysis above, as the Commissioner is satisfied that the Form11 was filed on 1 April 2025 and, as this date falls more than two months after the filing deadline, the late filing surcharge provisions in section 1084(2)(a) of the TCA 1997 apply in this case.
48. The use of the word "shall" in the late filing surcharge provision in section 1084(2)(a) of the TCA 1997 indicates an absence of discretion in its application. The wording of the legislation does not provide for any circumstances in which the late filing surcharge might be mitigated or eliminated. If the return is filed later than the deadline, then the late filing surcharge provisions in section 1084(2)(a) apply. The legislation does not afford the Commissioner any discretion to disapply the rule.

Jurisdiction of an Appeal Commissioner

49. Finally, the Commissioner notes the Appellant's submissions on alleged unfairness from the imbalance of power and financial resources between the Appellant and the Respondent, the technical challenges of using the ROS system, the previous errors encountered when using ROS and the Respondent's customer service. The Commissioner also notes the Appellant's submissions on ■■■ good compliance record in prior tax years.
50. In the Court of Appeal case of *Lee v Revenue Commissioners* [2021] IECA 18 and [2021] IECA 114 ("*Lee*"), at paragraph 20, Murray J. stated:-

"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.”

51. In *Lee*, Murray J. continued at paragraph 76:-

“[...] the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes.”

52. The Commissioner empathises with the Appellant on the issues ■■■ has raised. However, the Commissioner does not have jurisdiction to set aside a decision of the Respondent based on the alleged imbalance of power and financial resources between the parties, the technical challenges of using ROS, previous errors the Appellant encountered when using ROS or customer service issues. Similarly, the Appellant’s good compliance track record in previous years, while commendable, cannot be used as a basis to disapply the relevant tax legislation in this appeal.

53. The Commissioner finds that these grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. These matters come within the jurisdiction and remit of the Courts.

Conclusion

54. In an appeal before the Commission, the burden of proof rests on the Appellant who must prove, on the balance of probabilities, that an assessment to tax is incorrect.

55. For the reasons set out in the analysis above, the Commissioner finds the Form11 was filed by the Appellant on 1 April 2025.

56. The Commissioner concludes that the Appellant has not discharged the burden of proving that, on the balance of probabilities, the Notice of Amended Assessment dated 1 April 2025 was incorrect. The reasons for this conclusion are:

56.1. The Form11 was filed on ROS on 1 April 2025.

56.2. The 2023 income tax pay and file deadline was 14 November 2024.

56.3. The Form11 was filed more than 2 months after the filing deadline.

- 56.4. The legislation providing for late filing surcharges, contained in section 1084(2)(a) of the TCA 1997, imposes a 10% surcharge where the Form11 is filed more than two months after the filing deadline.
- 56.5. Section 1084(2)(a) of the TCA 1997 does not provide for any exceptions to the application of the surcharge.
57. The Appellant's other grounds of appeal including alleged unfairness, technical difficulties using ROS, previous errors encountered on ROS, customer service concerns and the Appellant's previous compliance record do not have a bearing on the determination of the appeal as these matters fall outside the jurisdiction of the Commissioner.

Determination

58. As such and for all the reasons set out above, it is determined that the Appellant has failed in ■■■ appeal against the Notice of Amended Assessment dated 1 April 2025. Therefore, the Notice of Amended Assessment issued by the Respondent on 1 April 2025 shall stand.
59. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the Appellant's circumstances and the significant effort required to undertake this appeal. The Appellant was entitled to check whether the Notice of Amended Assessment dated 1 April 2025 was correct and ■■■ was prudent to do so in all the circumstances. However, as noted above, the legislation does not afford the Commissioner any discretion in this matter.
60. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

Notification

61. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) 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) TCA 1997. This notification under section 949AJ 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

62. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Suzanne Carter
Appeal Commissioner
06 January 2026