AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

39TACD2025

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 surcharges 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 €13,786.07 for the accounting period 2021 and in the amount of €10,152.52 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 submitted that it filed (through its agent) a corporation tax return ("CT1") for the accounting period 2021 on 10 June 2022 and a CT1 for the accounting period 2022 on 15 April 2023.

4. On 28 May 2024, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €13,786.07 for the accounting period 2021. On the same date, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €10,152.52 for the accounting period 2022.

5. On 27 June 2024 and 11 July 2024, the Appellant submitted a Notice of Appeal to the Commission, with enclosures. On 6 September 2024, the Appellant submitted a Statement of Case. On 11 September 2024, the Respondent submitted a Statement of Case. 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 parties did on 9 and 12 October 2024. 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 that it appealed two notices of assessment dated 28 May 2024, one which related to 2021 and the other which related to 2022. The Notice of Appeal referred to enclosed correspondence with the Respondent, which stated (among other things):

> "*As agent I recall software uploading issues at the time of filing the CT1's for 2021 & 2022. However, the CT1's did submit easily for both years and within days there were Chapter 4 of Part 41A TCA 1997 tax assessments issued for both years. Everything appeared fine as regards the CT1 filing, the assessments matched exactly with our agents CT calculations and more importantly there was no add on to the assessments for CT late filing surcharges*."

15. In its Statement of Case, the Appellant submitted (among other things):

> "*Firstly, once first alerted to the non-filing of iXBRL financial statements 2021 & 2022 on 28 May 2024, the appellant does not dispute the requirement to file financial statements in an iXBRL format as required by s.884 TCA 1997…*
>
> *We ask that the surcharges be set aside taking account of the following mitigating factors:*
>
> *Revenue for the first time made us aware on the surcharges on 22 May 2024* [redacted] *Prior to 22 May 2024 the tax agents had already filed 2023 CT1 without iXBRL accounts, believing everything to be in order (2023 accounts since filed in iXBRL format).*
>
> *The tax agents did experience IT filing acceptance problems for the 2021 & 2022 iXBRL accounts. However, the CT1's submitted without the iXBRL accounts and for both years the CT1 assessments issued as normal within days of filing. There was no mention of a surcharge or missing electronic accounts. Once the CT1 filing*

deadline passed, there were no revised assessments to alert to absence of the electronic statements or the surcharges. [redacted] *I believe that it was reasonable to content that everything was in order, all taxes were paid on time, there were no mention of amended assessments or surcharges.*

[redacted] *Electronic filing was new to the tax agent, we would expect Revenue to be proactive in supporting the tax payer and agent with a warning or alert to the absence of the electronic accounts.*

Why are outstanding iXBRL accounts not flagged in red on ROS as is the case with a late Vat 3 or VAT RTD for example?

Why does ROS allow the CT1 to be filed apparently as normal when in fact the electronic statements are missing at the point of CT1 filing. A simple alteration to the software to reject the CT1 filing where not accompanied by the iXBRL accounts would have prevented this oversight and the issue under appeal.

Why did Revenue continue to issue tax clearance certificates for all years 2021 to 2024 prior to the issue of the amended assessments/surcharges? If the tax clearance certificates were declined because of the issues under appeal then the taxpayer/agent would have been alerted to the problem much sooner, as a minimum avoiding the 2022 surcharge and at worst paying only the 5% surcharge for 2021.

The non-filing of the electronic statements was not intended or deliberate. There was no loss to Revenue, all taxes were paid on time. [redacted]."

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

"*Section 1084(1)(b)(i)*

(I) The tax payer did not deliberately or carelessly deliver an incorrect return of income on or before the specified return date for the chargeable periods. CT returns were filed before the return dates but due to technical difficulties with IXBRL accounts did not file properly. However, Revenue accepted the CT1 filings and it was assumed that all was in order. The filing date passed and there was no prompt from Revenue that the IXBRL filing was outstanding and there were no amended assessments raising surcharges after the CT1 filing deadlines. The alert and surcharge

assessments were raised by Revenue on 28 May 2024 [redacted]

(II) (A) This section does not prevent clause (I) applying because the tax payer did not deliberately or carelessly deliver an incorrect return of income on or before the specified return date for the chargeable periods. (II) (B) does not prevent clause (I) applying because although the surcharges were paid in July 2024 it became necessary to pay only because Revenue withdrew the taxpayers tax clearance certificate although promising not to take action until 31st August 2024. Withdrawal of a tax clearance certificate would have resulted in loss of contracts severely detrimental to the taxpayer's business. Taxpayer had no choice but to pay the surcharges while awaiting the outcome of the tax appeal.

Section 1084(1)(b)(ia)

Taxpayer was not aware of the problems relating to the absence of iXBRL accounts until alerted by Revenue in May 2024. Therefore, the taxpayer did not deliberately and carelessly deliver a return in a form other than that required by the regulations.

Section 1084(1)(b)(ib)

This subparagraph should not apply because notice of the absence of iXBRL accounts and related surcharges was brought to the taxpayer's attention by Revenue only in May 2024 and the outstanding iXBRL accounts were filed within a matter of days of such notice.

Section 1084(1)(b)(ii)

The late filing of iXBRL accounts was neither deliberate or careless. Notice of the incorrect filing was first notified by Revenue in May 2024. The error in the return of income was remedied within days of the Revenue's May notification. Three was no unreasonable delay in remedying the matter."

Respondent

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

"*The appellant's 2021 and 2022 iXBRL were filed beyond the filing deadline, this has resulted in a 10% late filing surcharge being applied for both years: €13,786.07 in 2021 and €10,152.52 in 2022. There is a three-month filing period from the CT*

submission deadline to make the iXBRL filing and this was not met in either 2021 or 2022. The CT return is not complete until a valid iXBRL filing has been submitted.

[redacted]

In their appeal the appellant states that a combination of COVID pressures and technical issues with iXBRL were mitigating factors in these returns not being filed. They also question why Revenue did not alert them to the outstanding returns. It is not Revenue's role to inform individual taxpayers of their filing obligations and it is not practical for Revenue to monitor the compliance in advance of late filing of all taxpayers. There was no correspondence at the time these iXBRL accounts were due to be filed, of any technical issues."

18. On the question of whether section 959AF(1A) applies to this appeal, the Respondent submitted that as the matter under appeal is a late filing surcharge for an incomplete and thus 'late' return, the Respondent believed it be an invalid appeal.

Material Facts

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

    19.1. On 10 June 2022, the Appellant filed a CT1 on ROS for the accounting period 2021.

    19.2. The Appellant filed accounts in iXBRL format for the accounting period 2021 beyond the filing deadline.

    19.3. On 15 April 2023, the Appellant filed a CT1 on ROS for the accounting period 2022.

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

    19.5. The Appellant did not present evidence of contemporaneous correspondence to the Respondent about technical difficulties with filing the accounts for the accounting periods 2021 or 2022.

19.6. On 28 May 2024, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €13,786.07 for the accounting period 2021.

19.7. On 28 May 2024, the Respondent issued a notice of amended assessment which showed a surcharge for late submissions in the amount of €10,152.52 for the accounting period 2022.

19.8. On 27 June 2024, the Appellant submitted a Notice of Appeal to the Commission.

Analysis

20. This appeal relates to surcharges imposed by the Respondent on the Appellant for the tax years 2021 and 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".*

21. 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

22. 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*".

23. 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.

24. 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"*.

25. 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.

26. 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 surcharges under section 1084(2) of the TCA 1997. Accordingly, to determine whether the Appellant has a right to appeal those surcharges, the Commissioner must consider whether any of the three prescribed exceptions applies.

27. 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 Appellant made submissions in relation to the provisions of section 1084(1)(b), including that: "*The tax payer did not deliberately or carelessly deliver an incorrect return of income on or before the specified return date for the chargeable periods. CT returns were filed before the return dates but due to technical difficulties with IXBRL accounts did not file properly. However, Revenue accepted the CT1 filings and it was assumed that all was in order…Taxpayer was not aware of the problems relating to the absence of iXBRL accounts until alerted by Revenue in May 2024. Therefore, the taxpayer did not deliberately and carelessly deliver a return in a form other than that required by the regulations."* 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.

28. The Appellant's submissions refer to the delivery of a return of income on or before the specified return date. The Commissioner considers that irrespective of whether the Appellant's submissions are 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.

29. 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

30. 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 periods 2021 and 2022 electronically in addition to filing the CT1 return.

31. 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 a "*three-month filing period from the CT submission deadline to make the iXBRL filing*". 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.

32. The Appellant submitted that it filed a CT1 on ROS for the accounting period 2021 on 10 June 2022 and it filed a CT1 on ROS for the accounting period 2022 on 15 April 2023. The Respondent did not contest these facts, which the Commissioner has found to be material facts.

33. The accounting periods at issue in this appeal were 2021 and 2022. Accordingly, the accounts were due to be filed electronically on or before 23 September 2022 and on or before 23 September 2023 respectively. The Respondent submitted that the iXBRL accounts for 2021 and 2022 were filed beyond the deadline. The Appellant has not disputed these facts, which the Commissioner has found to be material facts. In summary, the Appellant submitted that it recalled software uploading issues and experienced IT filing acceptance problems for the 2021 & 2022 iXBRL accounts, but the non-filing of electronic statements was not intended or deliberate and it did not become aware of an issue with the filing of electronic accounts for 2021 and 2022 until 2024.

34. In circumstances where the Appellant did not file its accounts for 2021 and 2022 electronically on or before the specified return dates, the Commissioner finds that Respondent was entitled to impose surcharges under section 1084 of the TCA 1997.

35. 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 28 May 2024 for the accounting period 2021 showed an amount of tax chargeable to be €137,860.75 and the surcharge for late submission of returns to be €13,786.07 i.e. 10% of the total. The notice of amended assessment which the Respondent issued on 28 May 2024 for the accounting period 2022 showed an amount of tax chargeable to be €101,525.25 and the surcharge for late submission of returns to be €10,152.52 i.e. 10% of the total. The Commissioner is satisfied that the Respondent was correct in imposing those surcharges, under section 1084(2)(a)(ii) of the TCA 1997.

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

    36.1. The Appellant did not file electronic accounts for the accounting periods 2021 and 2022 on or before the specified return dates 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).

36.2. 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 CT1s for the accounting periods 2021 and 2022 on time, it did not file any accounts for those accounting periods on or before the specified return dates. 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. Even if section 1084(1)(b)(ii) applied, the Commissioner sees no basis on which to find that the error in the return was then remedied without unreasonable delay. The Appellant stated that it recalled uploading difficulties and IT filing acceptance problems with the 2021 and 2022 accounts. However, the Respondent stated that there was no contemporaneous correspondence of technical difficulties. The Appellant did not dispute this statement and did not present evidence of contemporaneous correspondence to the Respondent about technical difficulties with filing the accounts for the accounting periods 2021 or 2022, which the Commissioner has found to be a material fact. Therefore, the Commissioner does not view this as a case where the return can be said to have been remedied without unreasonable delay.

36.3. 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.

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

37. The Commissioner acknowledges the circumstances which the Appellant outlined in its submissions. In particular, the Commissioner notes reference to the Respondent's stated failure to alert the Appellant to the fact that the iXBRL accounts had not been filed and the continued issuing of tax clearance certificates, as well as the Appellant's suggestion that the Respondent's software should automatically flag any filing failures. 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.

38. 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 surcharges by the Respondent was correct. However, for the reasons set out above, the Commissioner is satisfied that the Respondent was correct to impose surcharges on the Appellant.

Determination

39. 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 periods 2021 and 2022.

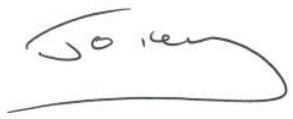
40. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

41. 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

42. 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
15 January 2025