Ref: 190TACD2020

BETWEEN/

REDACTED

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a surcharge imposed on the Appellant for the late filing of their financial statements via electronic means known as iXBRL.

2. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.

Background

3. The Respondent by way of a notice of amended assessment in accordance with Chapter 5 of Part 41A of the Taxes Consolidation Act (TCA) 1997 issued an amended assessment to corporation tax for the period 1 October 2017 to 30 September 2018. This amended assessment sought additional tax from the Appellant of €63,485.

4. The Appellant appealed the notice of assessment to the Tax Appeals Commission on 25 March 2020.

5. The facts are not in dispute in this appeal.

Legislation

6. s. 884 TCA 1997

(1)In this section, "return" includes any statement, declaration or list.

(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 Acts-

(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],

(b)the distributions received by the company from companies resident in the State[…]

(c)[…]

(d)payments made from which income tax is deductible and to which subsections (3) to (5) of section 238 apply, and

(e)all amounts which under section 438 are deemed to be annual payments.

[(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.]

[…]

(3)An event which, apart from section 584(3) as applied by section 586 or 587, would constitute the disposal of an asset giving rise to a chargeable gain or an allowable loss under the Capital Gains Tax Acts and the Corporation Tax Acts shall for the purposes of this section constitute such a disposal.

(4)A notice under this section may require a return of profits arising in any period during which the company was within the charge to corporation tax, together with particulars of distributions received in that period from companies resident in the State[…]

(5)Every return under this section shall include a declaration to the effect that the return is correct and complete.

(6)A return under this section which includes profits which are payments on which the company has borne income tax by deduction shall specify the amount of income tax so borne.

(7)A notice under this section may require the inclusion in the return of particulars of management expenses, capital allowances and balancing charges which have been taken into account in determining the profits included in the return.

(8)Subsections (3), (4) and (5)(b) of section 913 shall apply in relation to a notice under this section as they apply in relation to a notice under any provision of the Income Tax Acts applied in relation to capital gains tax by section 913.

(9)(a)In this subsection, "authorised officer" means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this subsection.

(b)Where a company which has been duly required to deliver a return under this section fails to deliver the return, or where the inspector is not satisfied with the return delivered by any such company, an authorised officer may serve on that company a notice or notices in writing requiring the company to do any of the following-

(i)to deliver to the inspector or to the authorised officer copies of such accounts (including balance sheets) of the company as may be specified or described in the notice, within such period as may be specified in the notice, including, where the accounts have been audited, a copy of the auditor's certificate;

(ii)to make available for inspection by an inspector or by an authorised officer within such time as may be specified in the notice all such books, accounts and documents in the possession or power of the company as may be specified or described in the notice, being books, accounts and documents which contain information as to profits, assets or liabilities of the company.

(c)The inspector or authorised officer may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this subsection.

7. s. 959I

"(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"

8. S.1084(2)(a)(ii) TCA 1997:

"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) ….

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

Submissions

9. The Appellant submitted that on 21 June 2019 the Appellant's agents filed the CT 1 for the year ended 30 September 2018, which declared taxable profits of €REDACTED and a tax liability of €REDACTED.

10. The Appellant' agent submitted that on the same day as the CT 1 was filed, a member of staff attempted to upload the iXBRL financial statements to ROS. The member of staff, although familiar with corporation tax, was relatively new when it came to iXBRL, was not aware that the submission was not successful. The staff member did not take a screenshot to indicate any issue.

11. The Appellant submitted that it is not known where the IT issue occurred, i.e. was it the Appellant's agent's end or at the Revenue end. The Agent submitted that the same issue arose with another client on the same day.

12. The Appellant's agent submitted that the Revenue records indicate the filing of the financial statements occurred at the same time as the filing of the CT 1 return in previous years.

13. The Appellant's agent submitted that their firm is aware of the Revenue advised protocol to be followed when unsuccessfully attempting to file iXBRL statements and acknowledged that this was not done at the time of filing the CT 1 return.

14. The Appellant's agent submitted that their firm is aware that the Respondent, by concession, allow financial statements filed 3 months after the specified return date to be deemed as filed on time.

15. The Appellant's agent submitted that the iXBRL statements were filed after the Respondent issued a reminder letter 6 months later on 31 January 2020. The agent acknowledged that the Respondent has no obligation to contact taxpayers in instances like this but suggested that a simple reminder to file the return within the 3 month concession period would allow cases like this to be resolved before surcharges are imposed.

16. The Respondent asserted that there is no provision in s.1084 TCA 1997 for an appeal against the application of the surcharge applied in accordance with the provisions of this section of the Act. The Respondent accordingly submitted that the appeal does not relate to an appealable matter and is therefore not a valid appeal.

17. The Respondent submitted that this appeal is against a 10% surcharge imposed on the Appellant for the late filing of their 2018 Financial Statements via iXBRL.

18. The Respondent submitted that on 31st January 2020 as part of a compliance review of the Appellant Group, the Respondent wrote to the Appellant requesting submission of the unfiled 2018 financial statements.

19. The Respondent submitted that, the letter of 31st January 2020 letter also notified the Appellant that a late filing surcharge would be due, because the complete tax return, was not filed on time.

20. The Respondent submitted that by concession, it permits financial statements filed up to 3 months after the specified return date to be deemed as filed on time.

21. The Respondent submitted that the statements required in the instant appeal were filed by the agent through Revenue on Line (ROS) on 28th February 2020, - eight months after the filing deadline.

22. The Respondent submitted that even though, the Appellant's grounds for appeal, contends that the financial statements were filed at the same time as they were filing the CT1, the Respondent's records notes only the receipt of the CT1 on 21st June 2019 but not the Financial Statements.

23. The Respondent submitted that when uploading iXBRL accounts, its systems return a message confirming a successful filing. If a filing is unsuccessful, an error message is displayed.

24. The Respondent submitted that to date, the Appellant's agents have not put forward any evidence that they received either messages at the time of filing the CT1 on 21st June 2019, nor have they provided other documentation which could verify that they filed the required iXBRL statements on 21st June 2019, as contended.

25. The Respondent submitted that the Appellant is a company with a turnover of over €150 million. The Appellant's financial year-end is 30 September, and the Appellant is required to file the tax return for the accounting period by 21 of June of the following year.

26. The Respondent submitted that s.959 I Taxes Consolidation Act (TCA) 1997 requires every chargeable person, as respects a chargeable period, to prepare and deliver a return in the "prescribed form" on or before the "specified return date for the chargeable period".

27. The Respondent submitted that s.884 TCA 1997 extended the definition of a Corporation Tax Return to include both the Form CT1 and the electronic Financial Statements.

28. The Respondent submitted that, where a company is obliged to file electronic Financial Statements, it has not fully met its Corporation Tax obligations by only filing a Form CT1 on or before the filing due date, unless the iXBRL Financial Statements are also filed.

29. The Respondent submitted that as the Appellant failed to submit a return as required by s.884 TCA 1997, on or before the specified return date, a surcharge arises under s.1084(2)(a)(ii) TCA 1997:

> *"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) ….*
>
> *(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,"*

30. The Respondent submitted that under legislation and Revenue guidelines, a complete tax return of the company includes both a CT1 Corporation Tax Return and the financial statements in an iXBRL format.

31. The Respondent submitted that the Amended Notice of assessment issued, which imposed a late filing surcharge under s.1084 TCA 1997 of €63,485.

Analysis and findings

32. The Respondent in its submissions considers that there is no provision in s.1084 TCA 1997 for an appeal against the application of the surcharge applied in accordance with the provisions of this section of the Act.

33. The TAC received an appeal in this case on 25 March 2020 and advised the Respondent of its receipt. The Respondent advised the TAC on 22 April 2020 that it had no objection to accepting this appeal. The TAC sought statements of case in the matter from both parties in accordance with s.949Q TCA 1997 on the same date. The TAC considers the appeal as having been made in relation to an appealable matter and consequently the appeal is a valid appeal for the purposes of S949J TCA 1997. The TAC does not accept the submission from the Respondent that the appeal has not been made in relation to an appealable matter.

34. The question to be answered in this appeal, is whether or not the Appellant has fully met its Corporation Tax obligations, in accordance with s.959 I Taxes Consolidation Act (TCA) 1997, to prepare and deliver a return in the "prescribed form" on or before the "specified return date for the chargeable period 1 October 2017 to 30 September 2018, to include both the Form CT1 and the electronic Financial Statements.

35. Certain companies have a mandatory requirement to file electronic financial statements (in an electronic format known as eXtensible Business Reporting Language or "iXBRL") together with its Corporation Tax return. The Appellant does not qualify for exemption to this filing requirement.

36. There is no dispute between the parties in relation to the Appellant's requirement to file financial statements in an iXBRL format as required by s.884 TCA 1997.

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

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

38. The Appellant has submitted that its agent attempted to file both the Corporation Tax Return (CT1) and its iXBRL financial statements on the same date on 21 June 2019.

39. Both parties agreed that the required return was filed late on 28 February 2020.

40. The Appellant has no record of having submitted the IXBRL accounts when submitting the CT1 on 21 June 2019. The Appellant has submitted that its agent's staff member was not aware that the submission of the iXBRL statements was not successful.

41. The Appellant relied on the Respondent's failure to notify it that its submission was unsuccessful in support of its appeal.

42. The Respondent has pointed to its comprehensive Tax and Duty Manual in relation to the submission of iXBRL financial statements as part of the statutory corporation tax returns.

43. The Respondent has also pointed out that it regards the submission of the iXBRL statements within 3 months as satisfying the filing requirements without the imposition of the penalty as set out at 34 above.

44. The Appellant is a significant business and ought to be aware of the perils of failing to file its iXBRL statements in the same way as it was aware of its obligations to file its CT1 and pay the appropriate tax arising.

45. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessment to tax, raised by the Respondent is incorrect.

46. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: *'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.'*

Determination

47. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the Respondent is correct in making an assessment for additional tax as a surcharge in accordance with s.1084(2)(a)(ii) TCA 1997 in the amount of €63,485.

48. The appeal is hereby determined in accordance with Section 949AK TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

9 NOVEMBER 2020