



**37TACD2019**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction and Background**

1. This appeal relates to the denial of an application for exclusion from the Mandatory Electronic Filing requirements in respect of P30's and P45's in accordance with S.917EA (4) Taxes Consolidation Act (hereafter referred to as "TCA") 1997 and S.I. No. 156 of 2012 (5). By agreement of the parties this appeal is adjudicated in accordance with the provisions of S. 949U TCA 1997.
2. The Appellant runs a small business. She is required to file employee-related tax returns, such as forms P30 and P35, in respect of this business. Having claimed relief under S.787 TCA97 (Retirement Annuity Contract Payments) in her personal tax return the Appellant became subject to the provisions of S.917EA TCA 1997 (mandatory electronic filing and payment of tax) from 1 June 2012. The Appellant has sought relief from the obligations of S.917EA TCA 1997 (hereafter referred to as "TCA 97") and be allowed continue to file forms P30 and P35 relating to her business in



paper format. It is not disputed by the Appellant that absent the exclusion, she is subject to the provisions of S.917EA(4) TCA 97 in respect of the forms P30 and P35.

3. The Appellant has been denied her exclusion request by the Revenue Commissioners on the basis that, in their opinion, the Appellant had not satisfied the conditions specified in S.I. No. 156 of 2012.
4. What is in dispute is whether the Appellant qualifies under the exclusion provisions of S.917EA(4) and S.I. No. 156 of 2012(5).

## Legislation

### Section 917EA - Mandatory electronic filing and payment of tax

***“electronic means”** includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic means of transmission of data and other forms of related technology by means of which data is transmitted;*

***“specified person”** means any person, group of persons or class of persons specified in regulations made under this section for the purposes of either or both paragraphs (a) and (b) of subsection (3);*

***“specified return”** means a return specified in regulations made under this section;*

*(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.*

*(4) Regulations made under this section shall include provision for the exclusion of a person from the requirements of regulations made under this section where the Revenue Commissioners are satisfied that the person could not reasonably be expected to have the*



*capacity to make a specified return or to pay the specified tax liabilities by electronic means, and allowing a person, aggrieved by a failure to exclude such person, to appeal that failure to the Appeal Commissioners.*

*(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.*

Tax returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2012  
(S.I. No. 156 of 2012) - Subsection 5 - Exclusion of certain specified persons

*(1) A specified person may, by notifying the Commissioners in writing, request to be excluded from the provisions of these Regulations on the grounds that the specified person does not have the capacity to make a specified return or pay the specified tax liabilities by electronic means and the notification shall include all information relevant to the consideration by the Commissioners of the request.*

*(2) Where the Commissioners receive a notification from a specified person in accordance with paragraph (1) or where the Commissioners otherwise consider it appropriate, they may exclude the specified person from the provisions of these Regulations only if they are satisfied that, in all of the circumstances, the specified person could not reasonably be expected to have the capacity to make a specified return or to make a payment of specified tax liabilities by electronic means.*



*(3) A decision to exclude a specified person from the provisions of these Regulations by the Commissioners in accordance with paragraph (2) may be made at any time but where a notification has been received from a specified person in accordance with paragraph (1) the decision shall be made within 30 days of receipt of the notification, and the Commissioners shall, in all cases, notify the specified person in writing of the decision.*

Tax returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2012 (S.I. No. 156 of 2012) - Subsection 2 - Interpretation and general

(1) In these Regulations—

*“capacity” means sufficient access to the Internet by which either or both a specified return or the payment of any specified liabilities may be made by electronic means and, in the case of an individual, also means not prevented by reason of age or mental or physical infirmity from either or both making a specified return or paying any specified liabilities by electronic means;*

S.I. No. 289 of 2000 - Taxes (Electronic Transmission of Certain Revenue Returns) (Specified Provisions and Appointed Day) Order, 2000

and

S.I. No.112/2001 - Taxes (Electronic Transmission of Certain Revenue Returns) (Specified Provisions and Appointed Day) Order, 2001

The above Statutory Instruments in 2000 and 2001 specified that returns known as P35's and Employers' PAYE/PRSI remittance forms (P30's) came under the terms of S.917E TCA 1997.

### **Submissions**

5. The Appellant set out her statement of case for exclusion from the mandatory filing requirements in the following terms:-

“ We moved into this area recently and internet is not great. Only one person can be online in house at one time to get connection”.



In the Notice of Appeal the Appellant also stated that:-

“...it would be too expensive to ask accountant to do this work as margins are small.”

6. The Respondent set out their statement of case for denial of the exclusion from the mandatory filing requirements as follows: -

“An application was received in this office 23<sup>rd</sup> January 2017 from Appellant to be excluded from filing P35’s electronically on the basis of capacity; Appellant stated she had moved into a new housing estate and the internet is not good and only one person can use it at one time. She also stated that she is not good on computers and would need a training course to get familiar with Revenue Online Service (ROS).

As Appellant appointed an Agent to act on her behalf under PREM (Employment related taxes) the issue of capacity was deemed insufficient to exclude her from filing P35’s on line and her request was refused”.

7. Previous correspondence from the Respondent to the Appellant on 3 July 2017, stated that:-

“A person may be excluded from the obligation to pay and file electronically where the Revenue Commissioners are satisfied that the person does not have the capacity to do so and in this context “capacity” is taken to mean sufficient access to the Internet and in the case of an individual is not prevented by reason of age, physical or mental infirmity from filing and paying electronically.

I am not satisfied that you have demonstrated that you qualify for exclusion under the provision of regulation S.I. No. 223 of 2011. Accordingly, I am refusing your application for exclusion.”



## Analysis and findings

8. The sections of S.I. No. 156 of 2012 (5) most relevant to the matter in dispute in this case states that: -

*“(2) Where the Commissioners receive a notification from a specified person in accordance with paragraph (1) or where the Commissioners otherwise consider it appropriate, they may exclude the specified person from the provisions of these Regulations only if they are satisfied that, in all of the circumstances, the specified person could not reasonably be expected to have the capacity to make a specified return or to make a payment of specified tax liabilities by electronic means.*

*“capacity” is defined as sufficient access to the Internet by which either or both a specified return or the payment of any specified liabilities may be made by electronic means and, in the case of an individual, also means not prevented by reason of age or mental or physical infirmity from either or both making a specified return or paying any specified liabilities by electronic means;”*

Therefore, under the legislation “capacity” must be judged in terms of (a) sufficient access to internet or (b) prevented by reason of age or infirmity.

9. The Appellant has, based on her testimony, failed to demonstrate that she is prevented by reason of age or infirmity from complying with the mandatory filing regulations.

## The burden of proof

10. 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 assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

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.'*

Having considered the evidence and facts, the relevant legislation and related case law, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal in respect of their qualification for exclusion from the Mandatory Electronic Filing Requirements.

### **Determination**

11. The Respondent is correct not to grant an exclusion sought by the Appellant since the Appellant has not shown that she could not reasonably be expected to have the capacity to submit the P35/P30 electronically. Accordingly, this Appeal fails.
12. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**25 September 2019.**

