



30TACD2022

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the TAC”) as an appeal against a Notice of Amended Assessment for 2017 pursuant to Chapter 5 of Part 41A of the Taxes Consolidation Act 1997 [hereinafter the “TCA 1997”] for Capital Gains Tax (hereinafter “CGT”) for the year ending 31st December 2018 which was raised by the Revenue Commissioners (hereinafter “the Respondent”) on 6th April 2020.
2. The amount of tax at issue is €1,535.00.
3. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the TCA 1997.

Background

4. The Appellant filed his Income Tax return for 2018 on 12th November 2019 which included details of his CGT return for 2018 which accounted for the disposal of shares / securities as follows:

Disposal Shares / Securities Quoted	€4,657	
Chargeable Gain	€4,657	
Losses from a prior year	€3,583	
Less personal exemption	<u>€1,270</u>	
Net Chargeable Gain	€4,657	
Period 1/1/2018 – 30/11/2018:		
€3,503 to be charged at 33%		€1,155
Period 1/12/2018 – 31/12/2018		
€1,154 to be charged at 33%		<u>€ 380</u>
Total CGT due		€1,535

5. In the CGT self-assessment panel of his return the Appellant listed the CGT due as Nil.
6. The Respondent reviewed the Appellant's return and issued an Amended Notice of Assessment on 6th April 2020 assessing CGT due if €1,535. The Appellant disputes the Notice of Amended Assessment.

Legislation and Guidelines

7. Section 552(2) of the TCA 1997

(2)For the purposes of the Capital Gains Tax Act as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with—

(a)in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b)in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

Submissions

Appellant's Submissions

8. The Appellant submits that in filing his CGT return he deducted what he feels are “*legitimate expenses per Revenue guidelines*”. The Appellant submits that he incurred the following expenses which he claims were essential to allow him trade online:

i. Laptop 1	€1,100
ii. Laptop 2	€1,207
iii. Screen	€ 200
iv. Data services	€1,005
v. Programming to develop algorithms	€ 406
Total	€3,918

The Appellant subsequently withdrew his claim that “programming to develop algorithms” was a legitimate expense.

9. The Appellant submits that the expenses claimed which relate to device purchases (expenses paragraph 8 (i-iii) above) were essential “incidental costs, wholly and exclusively” incurred for the relevant activity of “trading in shares / securities”. The Appellant submits that the income the subject matter of the CGT assessment was generated from online trading and submits that he believes that it is impossible to engage in online trading without some devices, screen, internet connection, electrical supply. The Appellant submits that the devices which he purchased were wholly and exclusively purchased for the purpose of online trading and this leads him to believe that the cost of the devices were necessarily incurred for trading activity. The Appellant submits that he only included items specifically purchased and used solely for trading online and that he did not include any previously purchased items such as a modem, desk or a personal laptop which were also essential and used daily in connection with the relevant devices. He submits that he did not deduct any charges for powering the relevant devices for 10 hours a day, 5 days a week nor did he include internet connection costs.
10. The Appellant submits that the expenses claimed which relate to data services falls under the description of “*remuneration paid for the professional services of any surveyor, valuer*” pursuant to section 552 of the TCA 1997. The Appellant submits that he chose the data services which he paid for “*having surveyed the several hundred thousand available options on the stock markets, identified what asset should be bought, identifying its value, specifying exactly what price should be paid for it (i.e. its value), at what point in time, how it is valued relative to fair value (which dictates the likelihood of profit) and how long it should be held for an the value to sell it at.*”

Respondent's Submissions

11. The Respondent submits that the expenses claimed by the Appellant are not allowable deductions for CGT. The Respondent submits that section 552 of the TCA 1997 provides that *"... the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with—*

(a) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts."

12. The Respondent submits that the expenses claimed by the Appellant for laptops and a screen are not allowable deductions. In addition the Respondent submits that the expenses claimed by the Appellant which relate to data services did not enhance the value of the asset and are also not allowable deductions.

13. The Respondent submits that the correct CGT due by the Appellant 2018 is €1,228.26 which is calculated as follows:

2018 Gain	€8,575
Expenses allowable	€ 0
Less loss going forward	<u>€3,583</u>
	€4,992
Less exemption	<u>€1,270</u>
Chargeable Gain	€3,722 at 33% = €1,228.26 CGT due

Material Facts

14. The following material facts are at issue in this Appeal:

- i. The expenses claimed by the Appellant were incidental costs pursuant to section 552(2) of the TCA 1997;
- ii. The Appellant made a chargeable gain in 2018 of €3,722 for the purposes of CGT calculation which resulted in CGT due of €1,228.26.

15. The Commissioner has examined the material facts at issue.

The expenses claimed by the Appellant were incidental costs pursuant to section 552(2) of the TCA 1997:

16. The Appellant claims that the device and data services expenses claimed were incidental costs as set out in section 552(2) of the TCA 1997. He claims that he purchased two laptops and a screen along with data services all of which were used wholly and exclusively for the activity of trading in shares / securities.

17. Section 552(2) of the TCA 1997 defines incidental costs as “...*incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal...*” Incidental costs are specifically identified as being:

- fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and
- costs of transfer or conveyance (including stamp duty).

18. Section 552(2)(a) of the TCA 1997 relates to allowable costs of acquisition of an asset and defines them as being the costs of advertising to find a seller.

19. Section 552(2)(b) of the TCA 1997 relates to allowable costs of disposal of an asset and defines them as being:

- i. the costs of advertising to find a buyer and
- ii. costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of CGT including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

20. The Commissioner finds that the purchase of the devices by the Appellant, that is to say of two laptops and a screen, do not fall within the categories of allowable costs identified in section 552(2) of the TCA 1997. In particular, the purchase of the devices does not fall within the category of allowable costs of acquisition of an asset as claimed by the Appellant as they are not the costs of advertising to find a seller as defined in section 552(2) of the TCA 1997. In addition, the purchase of the devices does not fall within the category of allowable costs of allowable costs of disposal of an asset as the cost of the devices were neither the costs of advertising to find a buyer nor were they the costs reasonably incurred in making an valuation or apportionment required for the purposes of the computation of

CGT. In addition the Commissioner finds that they were not expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

21. The Appellant has not submitted any evidence, documentary or otherwise to the Commissioner, which identifies which particular dates the sale of the relevant assets occurred on and has link the information received to the sale of the assets.
22. As with any taxation appeal, the burden of proof rests with the Appellant who must prove on the balance of probabilities that the disputed tax is not payable as set out by Charleton J. in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49.
23. The Appellant has submitted examples of the data services which he claims fall under the category of ascertaining market value pursuant to section 552(2)(b)(ii) of the TCA 1997 as being expenses reasonably incurred in ascertaining market value. The examples submitted by the Appellant appear to be examples of online conversations which the Appellant had with an account identified as "██████████" on 6th July, 7^h July, 10th July, 13th July and 14th July although the year(s) of these conversations are not identified. In addition, an online communication from an unidentified account entitled "██████████" on 5th November 2018 has been submitted by the Appellant.
24. The Commissioner finds that the devices and the data services identified by the Appellant do not fall within the categories of allowable costs identified in section 552(2) of the TCA 1997. Therefore this material fact is not accepted.

The Appellant made a chargeable gain in 2018 of €3,722 for the purposes of CGT calculation which resulted in CGT due of €1,228.26;

25. In his 2018 CGT return the Appellant inserted a figure of €4,657. This appears to have been calculated by the Appellant as set out at paragraph 4 above.
26. The Appellant has submitted a document which states that his realised trades from July 2018 to December 2018 amounted to €8575.45. The Respondent has accepted this figure and has calculated the chargeable gain as being €3,722 with CGT of €1,228.26 being due on same.
27. The Commissioner has reviewed the figures and documentation submitted and agrees with this calculation. Therefore this material fact is accepted.
28. Therefore the following are the material facts which the Commissioner has accepted:
 - i. The Appellant made a chargeable gain in 2018 of €3,722 for the purposes of CGT calculation which resulted in CGT due of €1,228.26.

Analysis

29. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

30. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the expenses which he claims in the within appeal are incidental costs pursuant to section 552(2) of the TCA 1997.

31. The Commissioner finds that the CGT computation submitted by the Respondent of €1,228.26 is the correct computation and that CGT of €1,228.26 is payable by the Appellant.

Determination

32. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that CGT for 2018 was not payable.

33. Having made the findings detailed above, the Commissioner finds that CGT of €1,228.26 is payable by the Appellant. The initial assessment in the sum of €1535 was incorrect. The Commissioner determines pursuant to section 949AK(1)(a) of the Taxes Consolidation Act 1997 as amended that the Notice of Amended Assessment issued by the Respondent on 6th April 2020 be reduced accordingly.

34. It is understandable that the Appellant might be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

35. 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. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Clare O'Driscoll
Appeal Commissioner
8th February 2022