AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

52TACD2024

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against assessments raised by the Revenue Commissioners ("the Respondent") to income tax. The assessments to income tax were raised in respect of payments received by the Appellant from an income continuation benefit policy ("the benefit policy") taken out in South Africa. The Appellant contends that, as no tax relief was applied to the premiums paid by him, no income tax should be applied to the payments out of the benefit policy.

2. The appeal proceeded by way of a hearing on 23 January 2024.

Background

3. The Appellant filed Form 11 income tax returns for 2020 and 2021. On 16 August 2021 he received a Notice of Assessment for 2020 which showed a balance of payable tax of €1,841.35. On 21 October 2022 he received a Notice of Assessment for 2021 which showed a balance of payable tax of €1,024.40.

4. On 18 October 2022 the Appellant submitted a Notice of Appeal ("NOA") to the Commission. The appeal was stated to be in respect of income tax assessments for 2020, 2021 and 2022.

5. The appeal proceeded by way of a hearing on 23 January 2024. The Appellant appeared in person, and was accompanied by his spouse and his witness, [redacted], an accountant, who appeared by video link from South Africa. The Respondent was represented by [redacted], Assistant Principal.

Legislation and Guidelines

6. Section 18 (Schedule D) of the Taxes Consolidation Act 1997 as amended ("TCA 1997") states *inter alia* that

> "*1. Tax under this Schedule shall be charged in respect of –*
>
> *(a) the annual profits or gains arising or accruing to –*
>
> *(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,*
>
> *(ii) any person residing in the State from any trade, profession or employment, whether carried on in the State or elsewhere,*
>
> *(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State,*
>
> *[…]*
>
> *(2) Tax under Schedule D shall be charged under the following Cases:*
>
> *[…]*
>
> *Case III – Tax in respect of –*
>
> *(a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Case V of Schedule D;*
>
> *(b) all discounts;*

(c) profits on securities bearing interest payable out of the public revenue other than those charged under Schedule C;

(d) interest on any securities issued, or deemed within the meaning of section 36 to be issued, under the authority of the Minister for Finance, in cases where such interest is paid without deduction of tax;

(e) income arising from securities outside the State except such income as is charged under Schedule C;

(f) income arising from possessions outside the State except, in the case of income from an office or employment (including any amount which would be chargeable to tax in respect of any sum received or benefit derived from the office or employment if the profits or gains from the office or employment were chargeable to tax under Schedule E), so much of that income as is attributable to the performance in the State of the duties of that office or employment…"

7. Section 125 of the TCA 1997 provides *inter alia* that

" *'permanent health benefit scheme' means any scheme, contract, policy or other arrangement, approved by the Revenue Commissioners for the purposes of this section, which provides for periodic payments to an individual in the event of loss or diminution of income in consequence of ill health*."

8. Section 819(1) of the TCA 1997 provides *inter alia* that

"*For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State-*

(a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more…"

9. Section 959AG of the TCA 1997 states that

"*No appeal may be made against—*

(a) a self assessment made under section 959R, section 959T or section 959U,

(b) a self assessment amended under section 959V,

(c)the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in such an assessment."

10. Article 22(1) of the Double Taxation Treaty between Ireland and South ("DTT") states that

"*Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.*"

11. Article 23(1) of the DTT states that

"*Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland, which shall not affect the general principle hereof:*

a. South African tax payable under the laws of South Africa and in accordance with this Convention, whether directly or by deduction, on profits, income or gains from sources within South Africa (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which South African tax is computed."

12. Article 24(1) of the DTT states that

"*Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States*."

Submissions

Appellant

13. The Appellant stated that his income continuation benefit payments were not taxable in South Africa. He had not received tax relief on the premiums and therefore believed that to have the benefits taxed constituted double taxation. He believed this was prohibited by the DTT, and referenced Articles 23 and 24 thereof.

14. He stated that his disability payments arose from the benefit policy which should be treated the same as pension payments. The income continuation benefit was added to his life policy. He stated that section 730C of the TCA 1997 applied to them. He stated that he was jointly assessed for tax with his wife and the benefit policy was held jointly by them.

15. He denied that he was tax resident in Ireland and stated that he understood that residency only applied after living permanently in the country for three years. In response to the

Commissioner, he stated that he had lived in Ireland since [redacted] and had not returned to South Africa since that date. He had had a house in South Africa which he subsequently sold.

16. In response to the Respondent's contention that the appeal was invalid, he stated that his agent had been coerced by the Respondent to complete the Form 11 returns. He did not believe there was the option of indicating an Expression of Doubt.

17. He stated that he did not get any benefit from the payments out of the benefit policy, because they simply replaced the salary and bonuses he previously received. He stated that he was still paying monthly premiums.

18. The Appellant's witness, [redacted], stated that the benefit payments would not be taxable in South Africa, under section 10(1)(GL) of the relevant South African Income Tax Act. He stated that the Appellant continued to be tax resident in South Africa.

Respondent

19. The Respondent stated that the Appellant had been tax resident in Ireland since [redacted] The Appellant's benefit policy was not an approved "Permanent Health Benefit Scheme" and thus did not receive tax relief on the premiums in this jurisdiction. However, both approved and non-approved schemes attracted tax on the benefits paid. The income from the Appellant's benefit policy was not arising from a disability allowance paid by the South African state, but via a private policy. In Ireland, it was common for such policies to be paid by the employee themselves, and it could not be compared to a social welfare payment.

20. The Respondent stated that under Article 22 of the DTT, an individual's income is paid where the individual is resident. Article 23 did not apply because the Appellant had not paid tax in South Africa on the benefit payments. Article 24 did not apply because the Appellant was being treated the same as an Irish-born citizen.

21. The Respondent stated that the appeal was not valid, as it is not possible to appeal against self-assessment. The Respondent's representative told the Commissioner that the tax payable was calculated automatically on foot of the Appellant's Form 11 return being submitted.

Material Facts

22. Having read the documentation submitted, and having listened to the evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

    22.1. The Appellant is a South African citizen who moved to Ireland with his spouse on [redacted] He has lived in this jurisdiction since that date and has not returned to South Africa.

    22.2. The Appellant is the beneficiary of an income protection benefit policy, which was an optional extra benefit to a life policy taken out by him in South Africa. The Appellant paid the premiums in South Africa and did not receive tax relief on same.

    22.3. The benefit policy is a non-approved policy in this jurisdiction. Therefore, there would be no tax relief due on premium payments into the benefit policy.

    22.4. The Appellant was certified as disabled and has received payments from his benefit policy since. The payments are made to his South African bank account, and the monies are withdrawn by him and moved to his Irish bank account.

    22.5. The Appellant, via his then agent, filed his Form 11 returns for 2020 and 2021. On 16 August 2021 he received a Notice of Assessment for 2020 which showed a balance of payable tax of €1,841.35. On 21 October 2022 he received a Notice of Assessment for 2021 which showed a balance of payable tax of €1,024.40. There was no "expression of doubt" indicated on the Form 11 returns.

    22.6. The Appellant did not pay income tax on his payments from his benefit policy in South Africa. He did not show that the Respondent had treated him in a discriminatory manner compared to an Irish-born citizen in the same circumstances.

    22.7. The Appellant submitted a NOA to the Commission on 18 October 2022.

Analysis

23. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to impose income tax on the payments under the benefit policy. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [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."

24. However, before considering the substantive dispute between the parties, it is necessary to determine the scope of the appeal, and whether it is valid. The Appellant was aggrieved at the ongoing requirement to pay income tax on the payments to him, and his appeal was framed in terms of this ongoing requirement. However, his NOA was submitted to the Commission on 18 October 2022. While there was subsequent correspondence between the Commission and the Appellant regarding the appeal before the Commission notified the Respondent of it, the Commissioner is satisfied that the appeal was made when the NOA was submitted to the Commission, i.e. 18 October 2022.

25. Therefore, the Commissioner is satisfied that this appeal could only possibly be concerned with matters prior to the 18 October 2022. This is because section 949A of the TCA 1997 provides that an "appealable matter" means "*any matter in respect of which an appeal is authorised by the Acts*." Section 959AF authorises the making of an appeal in respect of an assessment. However, the only assessment that had been raised by the Appellant at the point of the making of the appeal was that in respect of 2020, which issued on 16 August 2021. The assessment in respect of 2021 issued on 21 October 2022, which was after the NOA was submitted by the Appellant to the Commission. Therefore, the Commissioner finds that the only assessment that could properly be before him is that for 2020. In coming to this view, the Commissioner notes that the appeal for 2020 was *prima facie* late, as it was not made within 30 days of the assessment being notified to the Appellant. However, as no objection on the grounds of lateness has been raised by the Respondent, the Commissioner does not find it necessary to consider the matter further.

26. However, the Respondent has objected to the validity of the appeal in respect of both 2020 and 2021 on the ground that it is impermissible to appeal against a self-assessment. In response, the Appellant stated that his then agent submitted the Form 11 on his behalf, that the agent was effectively coerced by the Respondent into submitting the Form 11, and that he did not believe it was possible to express an "expression of doubt" on the online Form 11 returns. The Respondent's representative at the hearing stated that it was possible to indicate an expression of doubt on the online Form 11.

27. The Commissioner is satisfied, both from the evidence of the Respondent and his own knowledge, that it was possible to indicate an expression of doubt on the online Form 11 for 2020 and 2021. He notes that no such expression of doubt was indicated on behalf of the Appellant. Section 959AG of the TCA 1997 states that no appeal lies against a self-

assessment, and the Commissioner finds that this provision applies to render the Appellant's appeal invalid. This is because section 949J(1) of the TCA 1997 provides that "*For the purposes of this Part, an appeal shall be a valid appeal if (a) it is made in relation to an appealable matter*…"

28. The Appellant sought to blame the submission of the Form 11 returns on both the Respondent and his former agent. Regarding his allegations against the Respondent, the Commissioner has no jurisdiction to determine whether the Respondent acted improperly or unfairly in its interaction with the Appellant (or any other taxpayer). The Commissioner can only make findings based on the fact that a Form 11 self-assessment, that did not contain an expression of doubt, was submitted on behalf of the Appellant for both 2020 and 2021. In any event, however, the Commissioner is satisfied that there is no evidence before him that could substantiate any allegation of impropriety on the part of the Respondent.

29. Regarding the Appellant's unhappiness with the actions of his previous agent, this is a matter between him and his agent and it is not something that the Commissioner can properly consider. This is because section 959L of the TCA 1997 provides that, where a return is submitted on behalf of a taxpayer by a person acting under the taxpayer's authority, *"…the Acts shall apply as if it had been prepared and delivered by the chargeable person*."

30. Consequently, the Commissioner determines that this appeal is invalid, and this finding on validity is final and conclusive. While this finding disposes of the matter, the Commissioner considers that it would be helpful for the parties to go on and address the substantive complaint of the Appellant; that the income from his benefit policy should not be subject to tax.

31. The Appellant's contention is that the payments to him arise from a life policy, and that consequently they should not be taxed. He argued that the payments did not constitute a "chargeable event" pursuant to section 730C of the TCA 1997, which concerns life policies.

32. The Appellant's [redacted] Life Plan Policy is indeed described as a "life policy" on the policy documents before the Commission. However, the Commissioner notes that the income continuation benefit plan was added by the Appellant, as he stated in his written submissions that "*this product [i.e. the benefit policy] was added by the Appellant as an additional option to be taken with the life cover and disability policy*." This is confirmed by the letter to the Appellant dated [redacted] from the benefit policy provider, which

stated that "*We have approved your Income Continuation Benefit claim…Your benefit payment will be made by the last day of each calendar month*."

33. Consequently, the Commissioner is satisfied that the Respondent was correct to conclude that the benefit policy was akin to a "permanent health benefit scheme" as defined by section 125 of the TCA 1997. However, unlike such a scheme as provided for by section 125, the Appellant's benefit policy was non-approved by the Respondent, and therefore did not attract tax relief on contributions under section 471 of the TCA 1997. The Appellant contended that this was unfair; however, this is not a matter that the Commissioner can consider. In any event, the Respondent confirmed that both approved and non-approved policies attract income tax on benefit payments, and therefore the Commissioner does not consider that the distinction between approved and non-approved policies is material in this instance, as this appeal is concerned with benefit payments out of the policy, not premium payments into it.

34. As the Commissioner concludes that the Appellant's benefit policy should properly be classified as akin to a "permanent health benefit scheme" and not a life policy, it follows that section 730C of the TCA 1997 is not applicable. [redacted] on behalf of the Appellant stated that payments on the Appellant's benefit policy do not attract income tax in South Africa. This was not disputed by the Respondent and the Commissioner has no reason to doubt this submission. However, the Commissioner only has jurisdiction to consider and apply Irish tax law.

35. The Appellant has denied that he is tax resident in this jurisdiction, and has contended that he would not become resident until he had been living here for three years; however, no provision or authority was provided to support this contention. On the other hand, section 819(1) of the TCA 1997 provides that "*an individual shall be resident in the State for a year of assessment if the individual is present in the State - (a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more…*" In his evidence, the Appellant stated that he moved to Ireland on [redacted] and has lived here since that date, and has not returned to South Africa at any stage since. Consequently, the Commissioner is satisfied that the Appellant has been tax resident in Ireland since [redacted] and that he is subject to Schedule D income tax in Ireland under section 18 of the TCA 1997.

36. The Commissioner also does not consider that the DTT provides support for the Appellant's argument that no tax is due on the benefit payments to him. Article 22 of the DTT applies so that the Appellant is taxable in Ireland. Article 23 prohibits double taxation; however, the Commissioner does not agree that the Appellant is subject to double

taxation in respect of his benefit payments. He has not paid taxation on the payments in South Africa. He contends that he paid tax on the income used to pay the premiums on the policy, and that this constitutes double taxation. However, the Commissioner notes that it is very common that people will be obliged to pay taxes on goods and services (e.g. VAT, stamp duty) notwithstanding that they purchased those goods and services with monies that have already been subject to tax, and he does not consider that this constitutes double taxation for the purposes of the DTT. The Appellant believes that this is unfair; however, the Commissioner has no role in considering the fairness of tax policy; his role is limited to considering and applying tax law.

37. Finally, the Commissioner does not agree that Article 24 is of assistance to the Appellant. This prevents discrimination against taxpayers in a contracting state compared to the nationals of that contracting state; it does not require that a taxpayer resident in one state needs to be treated in the same way as a taxpayer in the other state. The Respondent confirmed that Irish taxpayers are subject to income tax on benefits paid to them from permanent health benefit schemes, and therefore it cannot be said that the Appellant is being discriminated against.

38. In conclusion, the Commissioner finds that this is not a valid appeal, and that, in any event, even if it was valid, the Appellant has not demonstrated that the assessments to income tax raised against him by the Respondent in respect of the payments to him under his benefit policy are incorrect. The Commissioner appreciates that this will be disappointing for the Appellant, who clearly has spent considerable time and energy in preparing and submitting his appeal, and the Commissioner considers that he was fully entitled to check his rights on moving to Ireland. Nevertheless, as explained to the Appellant at the hearing herein, the Commissioner is obliged to apply Irish tax law as enacted by the Oireachtas, and consequently the Commissioner is satisfied that the appeal cannot succeed.

Determination

39. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the appeal is invalid, and that the Respondent was correct to raise assessments to income tax in the amount of €1,841.35 for 2020 and in the amount of €1,024.40 for 2021. Therefore, the assessments stand.

40. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK 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.

Simon Noone
Appeal Commissioner
26 January 2024

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.