AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

126TACD2024

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought by [redacted] ("the Appellant") in relation to a PAYE/USC Statement of Liability for the tax year 2023 dated 18 January 2024 ("Statement of Liability for Income Tax 2023") issued to the Appellant by the Revenue Commissioners ("the Respondent").

2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is adjudicated and determined without a hearing.

Background

3. On [redacted] October 2023 the Appellant submitted a Notice of Appeal to the Commission. Therein the Appellant submitted: *"[M]yself and my children [redacted] and [redacted] have been awarded a backdated pension following the coming to light with the [redacted] this year of the death of my husband [redacted] in [redacted]. [redacted] worked with [redacted] from [redacted] to [redacted] The annual amount for the children was 280 in [redacted] payable while they were in full time education which amounted to 1600 euros for [redacted] and for myself 843 annually which has*

amounted to 11832. This total amount has been forwarded to revenue from the pay master generals office in the form of a lump sum leaving myself and [redacted] *paying 40 percent tax. We think this is very unfair we would have payed [sic] little or no tax on this small amount I have been in contact nsso about this and they have said this is an issue for revenue. I have no notification from revenue just an amended tax credit certificate."*

4. On [redacted] October 2023 the Appellant submitted to the Commission a copy of an Amended Tax Credit Certificate issued to the Appellant and two screenshots of extracts from the Appellant's digital record on the Respondent's online portal MyEnquiries.ie. The screenshots submitted contained the following detail:

   "Pay for Income Tax: €11,832.38

   Income Tax paid: €4,732.95"

5. On [redacted] November 2023 the Appellant submitted a copy letter from the National Shared Services Office dated [redacted] November 2023 ("NSSO Letter") which stated the background to the Appellant's entitlement to payment of pension benefits arising from her late spouse's contributions to an occupational pension fund for spouses and children during his years of employment with the [redacted] ("[redacted]"). The NSSO Letter stated *"[W]hen the family became aware of the entitlement this year, the arrears due were calculated back to* [redacted]*. However due to Revenue instructions that income is taxed in the year received, these arrears are now being assessed at the higher rate of tax. It would appear that if the entitlement had been paid forthnightly [sic], from the entitlement due date in* [redacted]*, the pension benefit may not have attracted this higher rate of tax, if any at all due to the amount of the entitlement."*

6. On [redacted] February 2024 the Commission advised the Appellant that she must supply to the Commission a decision of the Respondent that is capable of being appealed to the Commission; a Notice of Assessment or Statement of Liability from the year she received the pension payment. The Appellant was also advised that her son must bring his own appeal in respect of his own tax affairs.

7. On [redacted] February 2024 the Appellant furnished a copy of the Statement of Liability for Income Tax 2023 to the Commission. The Appellant also submitted that *"[W]e were unaware of our entitlement to these pensions until May of last year when I was notified by* [redacted] *that* [redacted] *was looking for my details. I was not contacted by* [redacted]*. My Husband* [redacted] *was approaching his* [redacted] *Birthday on* [redacted] *last year. I rang* [redacted] *in* [redacted] *as I still had not been contacted by the* [redacted] *and received very unhelpful information. I kept on this case until finally we received the*

pension amount in October only to be told that it was going to be taxed by 40%. This whole business has been very distressing for several reasons. Because [redacted] *is living in* [redacted] *did not have to pay tax. I hope you can look at our case favorably [sic]."*

8. On [redacted] April 2024 the Appellant submitted her Statement of Case to the Commission.

9. On [redacted] May 2024 the Respondent submitted its Statement of Case to the Commission.

Preliminary Matters

10. The Appeal Commissioner ("the Commissioner") confirms that this Determination is in respect of the Appellant's appeal only to the Commission. The Commissioner finds that the within determination is not in respect of any members of the Appellant's family notwithstanding that they may have similar circumstances and claims as the Appellant.

11. For the avoidance of doubt the Commissioner in consideration and in assessment of all documentation, finds that the Statement of Liability for Income Tax 2023 is a Notice of Determination made by the Respondent further to the provisions of the TCA 1997 and for the purposes of making an appeal to the Commission as therein the Respondent states *"I, the above named Inspector, give notice that I have directed that this statement shall be treated in all respects as if it were an assessment to tax"* and *"….[I]f you wish to appeal against this Statement, you must do so within the period of 30 days after the date of this Statement…..You will be required to submit a copy of this Statement with your Notice of Appeal."*

Legislation and Guidelines

12. Section 112 of the TCA 1997: Basis of assessment, persons chargeable and extent of charge inter alia provides:

(1) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

(2) (a) In this section, "emoluments" means anything assessable to income tax under Schedule E.

(b) Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of subsection (1):

(i) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

(3) Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment.

(4) Where emoluments chargeable under Schedule E arise in the year of assessment 2017, and those emoluments are also chargeable to income tax in accordance with subsection (3) for the year of assessment 2018 or a subsequent year of assessment, the amount of the emoluments chargeable to income tax for the year of assessment 2017 shall, on a claim being made by the person so chargeable, be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment.

13. Section 960C of the TCA 1997: Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.

Submissions

The Appellant's Submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Appellant:

14.1. The Appellant's late husband [redacted] died in [redacted]. The Appellant's late husband was employed by [redacted] from [redacted] to [redacted]. In [redacted] 2023 the

Appellant received communication from [redacted] (a former employer of the Appellant's late husband) that [redacted] were looking for contact details for the Appellant due to her late husband's employment with [redacted]. As the Appellant did not receive any communication from [redacted] she contacted [redacted] directly. The Appellant was advised that she and her [redacted] children were each entitled to a small pension payment arising on her late husband's/father's death. The Appellant was advised that she was entitled to an annual pension payment of €842.23.

14.2. In [redacted] 2023 the Appellant received one payment from the NSSO for the period [redacted] (the year of death of her late husband) to 2023 (when the payment was made) ("Multiple Years' Pension Payment"). The Appellant was advised that the rate of Income Tax applied to the Multiple Years' Pension Payment was 40% as Income Tax is assessed in the year it is received.

14.3. The Appellant's [redacted] and [redacted] also received a lump sum payment each in 2023 in respect of their late father's pension contributions. The payment made to the Appellant's [redacted] was subject also to a rate of Income Tax at 40%. The payment made to the Appellant's [redacted] was not subject to any deduction for Income Tax as [redacted] was living outside the jurisdiction of the State.

14.4. The Appellant believes that the rate of Income Tax applied by the Respondent to the Multiple Years' Pension Payment made to her and to her [redacted] was excessive. The Appellant believes that if the annual pension payments due to her and her [redacted] children had been paid to her and them on a fortnightly basis commencing in [redacted] the year of death of her late husband/father, then the rate of Income Tax that would have applied to the payments would have been 20% and not the higher rate of 40% as was applied by the Respondent to the Multiple Years' Pension Payment made in 2023.

The Respondent's Submissions

15. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:

"The Appellant originally contacted the Respondent through MyEnquiries on [redacted] September 2023 in relation to a pension payment she was due to receive from the [redacted]. The pension in question was due to the Appellant on account of her deceased husband's previous employment with [redacted] and

was backdated from the time of her spouse's death in [redacted]. The Appellant enquired if she would be chargeable to income tax on this payment.

The Respondent replied to the Appellant on [redacted] September 2023 and confirmed the pension would be taxed in a normal manner. The Appellant replied to this message on [redacted] October 2023 and queried how this pension payment could be taxed in a normal manner, as it related to a number of years and was not confined solely to 2023. The Appellant submitted further correspondence to the Respondent on [redacted] October 2023 in respect of her children who also received a backdated pension payment and questioned the tax implications for them in lieu of this payment. The Appellant attached information from [redacted] with her enquiry which outlined the payments due to her children.

The Appellant subsequently contacted the Respondent by phone on [redacted] October 2023 in relation to her employments on record and the taxation of the pension from [redacted], the Respondent confirmed that she would need to contact the pension operator for further information in respect of this pension.

The Appellant replied to the Respondent on [redacted] October 2023 and confirmed she had spoken with the Paymaster General concerning the pension payment from [redacted]. The Appellant confirmed the Paymaster General noted they were not in a position to amend the payment over a number of years, and it was a matter for the Respondent on how the payment should be taxed. The Appellant also sought clarification on an appeals process, if the payment could not be adjusted to be taxed in the years it related to.

The Respondent clarified by reply to the Appellant on [redacted] October 2023 that no adjustments would be possible to the payment, and it was taxable in the year it was received. The Respondent also provided the Appellant with information on how to submit an appeal. The Appellant subsequently submitted an appeal to the Tax Appeals Commission in November 2023 in respect of the taxation of the pension payment received and taxed in 2023 that was applicable to years [redacted]-2023.

The Respondent contacted the Appellant on [redacted] November 2023 and confirmed the payment was taxable in the year it was paid. The Respondent did note that the part of the payment which related to 2017 could be backdated to that period; as per Section 112 (3) of the TCA 1997. The record of the Appellant was updated to reflect this on 23 January 2024.

The Respondent and the Appellant have been in continuous dialogue concerning this appeal, but to date the matter under appeal remains unresolved.

The Respondent would note that the payment received by the Appellant in 2023 was subject to taxation on the basis of Section 112 TCA 1997, which states that. '… the income tax for the year of assessment 2018 and subsequent years of assessment … shall be computed on the amount of the emoluments paid to the person in the year of assessment.' (emphasis added) It is the Respondents position that in the phrase 'shall be computed' the word 'shall' is determinative and allows for no discretion in the application of this provision. This means that income tax must be assessed in the year a payment is received rather than the year it is due or earned.

As outlined previously, the Appellant previously contacted the Respondent to query what if any income tax liability would be due on the payment received by her in 2023. The Appellant had assumed she would have had unused tax credit and rate band allocations for each of the years this payment was due, had it been paid in the year the payments related. The Respondent has clarified the taxation position with the Appellant and has confirmed how the payment was taxed, i.e. that it was a legal requirement under Section 112 TCA 1997. The Appellant was not satisfied with this position and submitted an appeal in November 2023, stating that it "This payment would've been a very small weekly payment where I would have to pay little or no tax".

The Respondent has spoken to the Appellant by phone on a number of occasions to explain that income is taxable on a receipts basis and the income is correctly taxable in 2023. Section 112 (4) TCA 1997 states: Where emoluments chargeable under Schedule E arise in the year of assessment 2017…the amount of the emoluments chargeable to income tax for the year of assessment 2017 shall, on a claim being made by the person so chargeable, be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment.

The [Appellant] [sic] is sympathetic to the Appellant in this matter but has no discretion under the existing legislation Section 112 TCA 1997 to amend the payment received in 2023 to years [redacted]-2023."

"Menolly Homes Ltd v Appeal Commissioners and Revenue Commissioners: [2010] ITR 75 states that 'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer' (para. 22). The onus, therefore, is on the Appellant to show that the Respondent has misapplied the legislation with regard to the tax treatment

applied to her record for 2023 and the taxation of her arrears pension payment from [redacted].

All correspondence and documentation submitted form the Appellant confirms that while the monies making up the payment were earned between [redacted] and 2023, the payment itself was only received in 2023. The Appellant, therefore, far from meeting the burden of proof required, has, in fact, only further demonstrated that the Respondent has acted correctly by taxing the payment as it did."

"The Respondent would argue that the same line of reasoning is applicable here. This means that even though the Appellant was due the income in the years [redacted] through 2023, it must be taxed in the year it was paid, which was 2023."

Material Facts

16. Having considered and assessed all the documentation submitted and the submissions made by the parties in this appeal, the Commissioner makes the following findings of material fact:

16.1. the Appellant's late husband [redacted] died in [redacted];

16.2. the Appellant's late husband was employed by [redacted] from [redacted] to [redacted];

16.3. in 2023 the Appellant was advised she was entitled to receive an annual widow's pension payment in the amount of €842.23 and the entitlement had accrued to her from [redacted] the year of her late husband's death;

16.4. in November 2023 the Appellant received one payment of the Multiple Years' Pension Payment from the NSSO as an arrears payment for the years [redacted]-2023,

16.5. the rate of Income Tax applied to the Multiple Years' Pension Payment was 40%.

Analysis

17. All material submitted to the Commission has been considered and assessed by the Commissioner before making this determination.

18. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found that in any appeal before the Commission the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court

case of *Menolly Homes Ltd v Appeal Commissioners and Anor*. [2010] ITR 75, wherein at paragraph 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".*

19. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly Homes*, wherein Charleton. J, stated:

> *"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

20. The Commissioner in consideration and in assessment of the submissions made by the Appellant refers to the Court of Appeal judgement in *Lee v The Revenue Commissioners* [2021] IECA 18, wherein Murray, J. stated at paragraph 20:

> *"The issue is, first and foremost, one of statutory construction. 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."*

21. The Commissioner in consideration and in assessment of all before the Commission notes that prior to the commencement of the Finance Act, 2017, section 112 of the TCA 1997 provided that tax was to be computed on the amount of income "for the year of assessment". This had been the legal position for many years and was examined in *Bedford v BH*, [1968] IR 320, when Kenny J, held in the context of an arrears payment made to a company director that tax deducted under the PAYE system was assessable in the "year of assessment" to which it was attributable. This was so even if the payment was received in a subsequent year. This meant that arrears payments were assessed for the year they were earned, not the year received. This was how tax matters were assessed until the coming into force of the Finance Act 2017.

22. The Commissioner notes that from the commencement of the Finance Act 2017, and therefore from 2018 onwards, the computation of income tax under the PAYE system would be based on the date of receipt of income. The Commissioner in consideration and

in assessment of section 112 of the TCA 1997, as amended by the Finance Act 2017, notes that at subsection (3) of the section, it provides that income tax which is to be charged under Schedule E for the year 2018 must be computed on the basis of the amount of income received by a taxpayer in that year.

23. The Commissioner refers to the provisions of section 112(4) of the TCA 1997 that allows a taxpayer to elect to have income received in 2018 but earned in 2017 charged in respect of 2017 but that there is no provision regarding income earned in the years before 2017.

24. The Commissioner refers to the provisions of section 112 (3) of the TCA 1997 and finds that the legislation mandates that income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment shall be computed on the amount of the emoluments paid to the person in the year of assessment. The Commissioner finds that as the Appellant received payment of the Multiple Years' Pension Payment in 2023 the then prevailing and the still prevailing legislation mandated and still mandates that the payment made to the Appellant must be assessed as being part of the Appellant's charge to tax for Income Tax for the year 2023 notwithstanding that the payment is in respect of the Appellant's entitlement to receive payments for the years [redacted]-2023.

25. The Commissioner notes the Respondent stated in its Statement of Case that *"[T]he Respondent contacted the Appellant on* [redacted] *November 2023 and confirmed the payment was taxable in the year it was paid. The Respondent did note that the part of the payment which related to 2017 could be backdated to that period; as per Section 112 (4) of the TCA 1997. The record of the Appellant was updated to reflect this on* [redacted] *January 2024" and "the Appellant [sic] is sympathetic to the Appellant in this matter but has no discretion under the existing legislation Section 112 TCA 1997 to amend the payment received in 2023 to years* [redacted]*-2023."* It is unclear to the Commissioner if the Respondent did make an adjustment to the Appellant's assessment for Income Tax in respect of the portion of the Multiple Years' Pension Payment attributable to the year 2017.

Determination

26. Having considered and assessed all the material before the Commission and the provisions of section 112 of the TCA 1997, the Commissioner finds that the Appellant has not established on the balance of probabilities that the Respondent was not entitled to assess the Multiple Years' Pension Payment on the basis of when received by the Appellant and to have issued the Statement of Liability for Income Tax 2023.

27. The Commissioner finds that because of the provisions of section 112 of the Finance Act 2017 as amended and with effect from 2018, the Multiple Years' Pension Payment was assessed by the Respondent on the basis of when the payment was received and not the period it was attributable to. The Commissioner finds that the Respondent did act in accordance with the prevailing legislation.

28. The Commissioner finds that if the Respondent has not already made the adjustment/reduction for the tax year 2017 in adherence with the provisions of section 112(4) of the TCA 1997, then the Respondent should make those appropriate changes to the Appellant's Income Tax assessment as soon as is practicable and that confirmation of same should be issued to the Appellant. The Commissioner finds that for the avoidance of doubt the requirement in section 112 (4) of the TCA 1997 of *"…on a claim being made by the person so chargeable be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment*" is met and satisfied by the Appellant's Notice of Appeal, as the Commissioner finds it is a claim for the reduction of the charge to Income Tax made against the Appellant by the Respondent.

29. The Commissioner acknowledges that the Appellant was within her rights to seek an appeal of the Respondent's determination in the Statement of Liability for Income Tax 2023.

30. The Commissioner understands the Appellant will be disappointed with this determination.

31. 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. This determination by the Commissioner of the Appellant's appeal is final and conclusive further to the provisions of section 949AP of the TCA 1997.

Notification

32. 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.

33. 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

34. 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.

Leonora B. Doyle

Leonora B. Doyle
Appeal Commissioner
10 July 2024