AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

131TACD2024

[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 Statements of Liability raised by the Revenue Commissioners ("the Respondent") which stated that the Appellant had unpaid income tax for the years 2019, 2020 and 2021 in the total amount of €14,570.17. The Respondent contended that the liabilities arose because the Appellant was taxed under joint assessment with his former spouse, when in fact he was separated at the time.

2. The appeal proceeded by way of a hearing on 17 July 2024.

Background

3. The Appellant was granted a decree of divorce from his wife on [redacted] 2021. On 24 October 2023, the Appellant completed income tax returns for 2019 to 2022. On 25 October 2023, Statements of Liability issued to the Appellant which showed the following underpayments:

Year	Amount €
2019	4790.08
2020	4890.04
2021	4890.05

4. On 20 December 2023 the Appellant appealed against the Statements of Liability to the Commission. On 31 January 2024 the Respondent objected to the Commission accepting the appeal, as it was made late. Having considered the reasons provided by the Appellant for the lateness of the appeal, the Commission decided to accept it. The appeal proceeded by way of a remote hearing on 17 July 2024. The Appellant appeared in person, and the Respondent was represented by its officers.

Legislation

5. Section 1015(2) of the Taxes Consolidation Act 1997, as amended ("TCA 1997") states that

> "*A wife shall be treated for income tax purposes as living with her husband unless either –*
>
> *(a) they are separated under an order of a court of competent jurisdiction or by deed of separation, or*
>
> (b) *they are in fact separated in such circumstances that the separation is likely to be permanent*."

6. Section 1016 of the TCA 1997 states that

> "*(1) Subject to subsection (2), in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.*
>
> *(2) Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment*."

7. Section 1017 of the TCA 1997 states *inter alia* that

"*(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –*

(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income…

(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section."

8. Section 1018(1) of the TCA 1997 states that

"*A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section*."

9. Section 1026 of the TCA 1997 states *inter alia* that

"*(1) Where a payment to which section 1025 applies is made in a year of assessment by a party to a marriage (being a marriage which has not been dissolved or annulled) and both parties to the marriage are resident in the State for that year, section 1018 shall apply in relation to the parties to the marriage for that year of assessment as if –*

(a) in subsection (1) of that section ", where the wife is living with the husband," were deleted, and

(b) subsection (4) of that section were deleted.

(2) Where by virtue of subsection (1) the parties to a marriage elect as provided for in section 1018(1), then, as respects any year of assessment for which the election has effect –

(a) subject to subsection (1) and paragraphs (b) and (c), the Income Tax Acts shall apply in the case of the parties to the marriage as they apply in the case of a husband

and wife who have elected under section 1018(1) and whose election has effect for that year of assessment…"

Submissions

Appellant

10. The Appellant stated that he was divorced in [redacted] 2021, and that all orders were made by the court on the basis that the parties were jointly taxed up to that date. He was therefore disappointed to subsequently be told by the Respondent that it was treating him as separated for the purposes of taxation for 2019 – 2021.

11. The Appellant stated that he was paying maintenance [redacted] He had to pay half of [redacted] accommodation expenses and could not afford the additional taxation assessed by the Respondent. He had sought a loan from the bank to tide him over.

12. The Appellant stated that [redacted] and he believed that their marriage suffered after that. [redacted]. In 2016, his ex-wife brought him to court to get maintenance, and the judge told him to pay maintenance in lieu of mortgage repayments.

13. He stated that he had got advice from a tax consultant who told him that he would need the consent of his ex-wife to be jointly assessed, but she was uncooperative. He stated that the law required married couple to be living apart for at least two years before a divorce could be granted, but his divorce took a lot longer to be finalised.

Respondent

14. The Respondent sympathised with the Appellant but was satisfied that it had correctly applied the provisions of the TCA 1997 when assessing him to additional tax. Married couples had to be living together in order to be jointly assessed, but the evidence demonstrated that the Appellant and his ex-wife had been living separately since at least 2016. His ex-wife had filed income tax returns for 2019 and 2020 which stated that she was married but living apart, which confirmed that the Appellant was not living with her as a married couple.

15. As the Appellant had been taxed under joint assessment from 2019 to 2021, he received additional tax credit and rate band allocations that were not due to him. The Respondent was happy to engage with the Appellant further to try to maximise the credits and allocations available to him, including for his payments towards his children's tuition fees,

but on the basis of the evidence before it to date, the Respondent was satisfied that it had correctly assessed the Appellant to additional income tax.

Material Facts

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

    16.1. The Appellant was jointly assessed to tax with his then wife for the years 2019 to 2021.

    16.2. The Appellant's marriage began to experience difficulties in [redacted] In 2016, the Appellant's then wife got an order for maintenance against him in court. Consequently, the Appellant was living separately from his wife from 2016.

    16.3. The Appellant was divorced from his wife in [redacted] 2021. Therefore, the separation of the Appellant from his wife in 2016 was permanent.

    16.4. The Respondent assessed the Appellant to additional income tax for 2019, 2020 and 2021, on the basis that he was separated from his wife in those years but had been jointly assessed with her. The Appellant had not challenged the amounts of additional tax as assessed by the Respondent.

    16.5. In 2019 and 2020, the Appellant's then wife filed income tax returns which stated that she was married but living separately from the Appellant.

Analysis

17. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent's assessment of him to additional income tax for 2019 - 2021 was incorrect. 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.*"

18. Section 1016 of the TCA 1997 provides that the default position regarding taxation of married couples is that they are assessed separately. However, this is subject to section 1018, which allows for a married couple to jointly elect to be jointly assessed to income tax "*where the wife is living with the husband*". Section 1015(2) provides that a married couple will be treated as living together unless *inter alia* "*(b) they are in fact separated in such circumstances that the separation is likely to be permanent*."

19. In this appeal, the Appellant was jointly assessed to tax with his then wife for the years 2019 to 2021, and was granted a decree of divorce in [redacted] 2021. The Respondent subsequently assessed him to additional income tax for 2019 – 2021, on the basis that he was living separately from his wife and should not have been jointly assessed with her.

20. The Commissioner has considerable sympathy for the Appellant. He does not doubt the evidence provided that the Appellant is in financial difficulties, and that [redacted] is proving particularly challenging for him. However, the Commissioner's jurisdiction is limited to interpreting and applying the law as enacted by the Oireachtas, and he does not have a discretion to disapply legislation because he has sympathy for the position in which a taxpayer finds himself.

21. In this instance, the Commissioner is satisfied that the Respondent has correctly concluded that the Appellant was not living with his ex-wife as a married couple from 2019 to 2021. The Appellant's own evidence was that difficulties arose in his marriage from [redacted] In 2016, his ex-wife got an order for maintenance against him. The Commissioner considers that this is clear evidence that the Appellant and his ex-wife were *de facto* separated and not living as a married couple from 2016.

22. The Appellant and his ex-wife were granted a decree of divorce in [redacted] 2021. The Commissioner is satisfied that this demonstrates that their separation from 2016 was permanent. Consequently, pursuant to section 1015(2)(b) of the TCA 1997, the Commissioner is satisfied that the Respondent correctly determined the Appellant to be separated from his ex-wife for the years 2019 to 2021.

23. As a result, the Commissioner considers that the Appellant should have been assessed separately from his ex-wife for 2019 to 2021. This is further confirmed by the fact that his ex-wife did not agree to be assessed jointly with him, but rather filed income tax returns on which she was assessed separately. It is axiomatic that, in order for a married couple to jointly elect to be jointly assessed to tax pursuant to section 1018 of the TCA 1997, they both have to agree to joint assessment. It is not possible that one spouse could be separately assessed and the other could be jointly assessed.

24. Therefore, the Commissioner finds that the Respondent was correct to conclude that the Appellant should have been separately assessed to tax for 2019 and 2021. The Appellant did not challenge the amounts of additional tax assessed by the Respondent (as opposed to the fact that additional tax arose on foot of his separate assessment) and therefore the Commissioner concludes that the additional assessments should stand.

25. Finally, while not formally raised as a ground of appeal by the Appellant, the Commissioner notes that, in the documentation provided by him, there is a letter from his solicitor in the divorce proceedings, querying whether he would be entitled to joint assessment on the basis of the maintenance payments being made by him under the divorce. However, section 1026 provides that such joint assessment can only occur where the former married couple so elect under section 1018, and as set out herein, there has been no such joint election by the Appellant and his ex-wife to date.

26. In conclusion, the Commissioner must find that the Respondent was correct to raise the additional assessments to tax against the Appellant for 2019 to 2021. The Commissioner notes that the Respondent's representatives at the hearing stated that they would be happy to further engage with the Appellant to attempt to maximise his tax credits and allocations, and the Commissioner would suggest to the Appellant that he discuss his position further with the Respondent in this regard.

Determination

27. 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 Respondent was correct to raise Statements of Liability against the Appellant for the years 2019 – 2021, and those Statements of Liability stand.

28. 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

29. 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

30. 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
31 July 2024