



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

160TACD2024

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

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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”) regarding the decision by the Revenue Commissioners (“the Respondent”) refusing the Appellant’s claim for a refund of income tax (“Income Tax”) paid by the Appellant for the taxable period from 1 January 2021 to 31 December 2021 (“2021 Income Tax Year”). The Respondent submits that the Appellant is not entitled to a refund of Income Tax for the 2021 Income Tax Year as the Appellant was tax resident in Ireland in 2021.
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. The Appellant was resident in Ireland when [REDACTED] began working for [REDACTED] on [REDACTED] February 2021. A condition of the Appellant’s employment was that [REDACTED] relocated to the UK as soon as Covid-19 Travel Restrictions between Ireland and the UK were lifted. The Appellant remained in Ireland working remotely for [REDACTED] until [REDACTED] relocated to the UK on [REDACTED] May 2021. The Appellant moved back to Ireland on [REDACTED] May 2021, and [REDACTED] officially transferred to [REDACTED] Ireland on [REDACTED] June 2021 and the Appellant has remained a resident of the State since that date.
4. From [REDACTED] 2021 to [REDACTED] 2021 the Appellant’s payroll for [REDACTED] was not processed in Ireland and the Appellant was taxed in the UK.
5. On [REDACTED] October 2022 the Appellant contacted the Respondent by phone regarding [REDACTED] 2021 tax record and [REDACTED] tax return for that period. The Respondent advised the Appellant during the call to have [REDACTED] tax agent finalise [REDACTED] income tax return for that period and [REDACTED] record would be finalised at that point.
6. On [REDACTED] December 2022 the Appellant’s tax agent wrote to the Respondent and submitted an income tax return on behalf of their client/the Appellant for the 2021 tax period with a computation which stated that the Appellant had a tax liability in Ireland for the 2021 Income Tax Year of €6,185.00 with a foreign salary income of €17,413.00 declared on the income tax return.
7. On [REDACTED] February 2023 the Appellant’s tax agent enquired as to the status of their client’s/the Appellant’s income tax return for the 2021 Income Tax Year.

8. On ■ March 2023 the Respondent replied to the Appellant's tax agent and requested a statement from HMRC that confirmed the Appellant's total income from all sources in the 2020/21 and 2021/22 UK tax years.
9. On ■ August 2023 the Appellant's tax agent provided the requisite information from HMRC to the Respondent.
10. On ■ September 2023 the Appellant's income tax return for the 2021 Income Tax Year was finalised and a Statement of Liability issued to the Appellant confirming a tax liability due of €6,185.00.
11. On 25 September 2023 the Appellant submitted ■ Notice of Appeal to the Commission. Therein the Appellant claims:

"I was unemployed in Ireland up to ■ February 2021. I started employment with ■ on the above date. This was on the understanding that I move to the UK as soon as Covid19 Travel Restrictions between both the UK and Ireland were lifted. I worked remotely in Ireland until the ■ May 2021. I travelled to the UK on the ■ May 2021. Due to ■ issues I decided I could not stay in the UK and resigned from ■. ■ did not accept the resignation, wishing to retain me, and they arranged a temporary Long-Term Assignment (LTA) whereby I would officially work from the ■ Ireland Dublin office. This was subject to remaining in the UK for 2 weeks so that they could finalise the LTA agreement with ■ and avoid any tax issues with the UK authorities. I returned to Ireland on the ■ May 2021. I officially started the LTA with ■ on the ■ June 2021. ■ have assessed that I owe money on my entire income from 2021. However, ■ and the Irish Revenue have not taken into account that I was not able to move freely from Ireland to the UK. I am appealing this tax liability based on the fact that I was living in Ireland only as a result of the Government's restriction on travel because of the COVID19 pandemic. This has resulted in me being liable for tax over a period where I was not in control of my country of residence. See email attachment for PAYE/USC Statement of Liability for the 2021 Tax Year dated ■ September 2023".

12. On 3 April 2024 the Appellant submitted ■ Statement of Case to the Commission.
13. On 3 April 2024 the Respondent filed its Statement of Case to the Commission.

Legislation and Guidelines

14. The legislation relevant to this appeal is as follows:

The statutory residence test - force majeure in the context of COVID-19: Guidance on the standard residence test;

Section 818 Taxes Consolidation Act (TCA) 1997;

Section 819 TCA 1997;

Section 820 TCA 1997;

Section 821 TCA 1997;

Section 822 TCA 1997;

Section 823 TCA 1997;

Ireland / UK Double Tax Treaty ("UK DTA").

The Appellant's Submissions:

15. The Commissioner sets out hereunder a summary of the Appellant's submissions:

The Appellant was hired by ██████████ in February 2021 and ██████ was working from Ireland until ██████ could relocate to the UK. The Appellant moved to the UK on ██████ May 2021 and ██████ relocated to Ireland on ██████ May 2021 where ██████ worked remotely for ██████████. The Appellant disputes and appeals the findings of the Respondent as stated in an email from the Respondent to the Appellant dated ██████ January 2024 which states that the Appellant did not satisfy the statutory residence test as ██████ did not meet the Covid-19 travel restrictions which were applicable from June 2020. The Appellant submits that ██████ *".....believes that this is not applicable to this situation. In my opinion tax is payable from my return to Ireland but it is not due for the period where the State restricted my freedom to travel."*

The Respondent's submissions:

16. The Commissioner sets out hereunder an extract of the Respondent's submissions from its Statement of Case:

"1. Statutory provisions being relied on

1.1 Section 818 Taxes Consolidation Act (TCA) 1997

1.2 Section 819 TCA 1997

1.3 Section 820 TCA 1997

1.4 Section 821 TCA 1997

1.5 Section 822 TCA 1997

1.6 Section 823 TCA 1997

1.7 Ireland / UK Double Tax Treaty ("UK DTA").

2. Outline of relevant facts

The Appellant [REDACTED] was resident in Ireland when [REDACTED] began working for [REDACTED] on [REDACTED] February 2021.

A condition of the Appellant's employment was that [REDACTED] relocated to the UK as soon as Covid 19 Travel Restrictions between Ireland and the UK were lifted.

The Appellant remained in Ireland working remotely for [REDACTED] until [REDACTED] relocated to the UK on [REDACTED] May 2021. The Appellant moved back to Ireland on [REDACTED] May 2021, and [REDACTED] officially transferred to [REDACTED] Ireland on [REDACTED] June 2021, and has remained a resident of Ireland since this date.

The payroll for the Appellant for [REDACTED] was not processed in Ireland and was taxed in the UK during the period [REDACTED] February – [REDACTED] June 2021.

The Appellant contacted the Respondent by phone on [REDACTED] October 2022 in relation to his 2021 record and tax return for that period. The Respondent advised the Appellant during the call to get his tax agent to finalise [REDACTED] income tax return for that period and [REDACTED] record would be finalised at that point.

The tax agent for the Appellant wrote to the Respondent on [REDACTED] December 2022 and submitted an income tax return on behalf of their client for the 2021 tax period. Along with the submitted income tax return, the tax agent of the Appellant included a computation that stated their client would have a tax liability in Ireland for 2021 of €6,185.00. Foreign salary income of €17,413.00 was declared on the income tax return.

The tax agent for the Appellant enquired as to the status of their client's income tax return on [REDACTED] February 2023.

The Respondent replied to the agent of the Appellant on [REDACTED] March 2023 and requested a statement from HMRC that confirmed the Appellants total income from all sources in the 2020/21 & 2021/22 UK tax years.

The agent for the Appellant provided the requisite information from HMRC on [REDACTED] August 2023.

On foot of this information, the Appellants income tax return for 2021 was finalised and a Statement of Liability issued to them on [REDACTED] September 2023, confirming a liability due of €6,185.00.

The Appellant contacted the Respondent on [REDACTED] September 2023 in relation to this matter, however the call was disconnected before the matter was resolved.

Following confirmation of an appeal submission with the Tax Appeals Commission, the Respondent contacted the Appellant by phone on [REDACTED] December 2023 in relation to their tax record for 2021. During the call, the Appellant confirmed that the income tax paid on [REDACTED] employment income in the UK was refunded on the basis that the Appellant was resident in Ireland and that [REDACTED] foreign salary income is chargeable to income tax in Ireland.

The Appellant understood that were [REDACTED] UK and Irish income sources to be taxed separately, [REDACTED] would be entitled to full credits and rate bands in each jurisdiction.

Article 15 of the Ireland UK DTA permits the state in this case, to tax the employment income of an individual who is in the State for over 183 days. In this case it is not in dispute that the Appellant was tax resident in Ireland in 2021 and therefore their income is taxable in this jurisdiction for that period.

Section 819 (1)(a) states: “an individual is considered tax resident in Ireland, inter alia, if he is resident in the State for 183 days or more in a tax year. Any part of a day spent in the Republic is treated as a full day of residency... travel plans can sometimes be unavoidably disrupted through no fault of the traveller, and thus some very limited relief to a visitor is offered by way of the ‘force majeure concession’”.

The Respondent’s pre and post Covid position on the concession, is that where a visitor is prevented from leaving Ireland on their intended day of departure due to ‘extraordinary natural occurrences’ which could not be reasonably foreseen/avoided, the visitor will not be regarded as being present in Ireland for tax residency purposes for the day after the intended day of departure, provided the visitor is unavoidably detained in Ireland on that day due only to the force majeure circumstances and not any other reasons.

In order for Covid-19 force majeure rules to apply, the following conditions must be met by the individual seeking this treatment:

- They left the State as soon as they reasonably could, which must have occurred on, or by 1 June 2020*
- They maintained their foreign tax residence position.*

The Respondent is satisfied based on the information on record, that the Appellant does not qualify for Covid-10 force majeure treatment in this matter.”

Material Facts

17. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
18. On ■ February 2021 the Appellant was living in Ireland and ■ began working for ■ ■ and a condition of the Appellant's employment was that ■ would relocate to the UK as soon as Covid-19 Travel Restrictions between Ireland and the UK were lifted.
19. The Appellant remained in Ireland working remotely for ■ until ■ relocated to the UK on ■ May 2021.
20. The Appellant moved back to Ireland on ■ May 2021 and ■ officially transferred to ■ Ireland on ■ June 2021.
21. From ■ February 2021 to ■ June 2021 the Appellant's payroll for ■ was not processed in Ireland and ■ was taxed in the UK.
22. On ■ December 2022 the Appellant's tax agent wrote to the Respondent and submitted an income tax return on behalf of their client for the 2021 Income Tax Year with a computation which stated that the Appellant had a tax liability in Ireland for the 2021 Income Tax Year of €6,185.00 with a foreign salary income of €17,413.00 declared on the income tax return.
23. On ■ September 2023 the Appellant's income tax return for the 2021 Income Tax Year was finalised and a Statement of Liability issued to ■ confirming a liability due of €6,185.00.
24. On 25 September 2023 the Appellant submitted ■ Notice of Appeal to the Commission.

Analysis

25. 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] IEHC 49, 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”.

26. 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..."

27. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee v The Revenue Commissioners* [2021] IECA 18, wherein Murray, J. stated at paragraph 76:

"The jurisdiction of the Appeal Commissioners is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

28. The Commissioner refers to the legislation and guidelines relevant to this appeal:

29. The Commissioner refers to the statutory residence test - force majeure in the context of COVID-19 which provides inter alia that:

"On 23 March 2020, Revenue updated the existing guidance on "force majeure" circumstances as it pertains to the residence rules for individuals. This formed part of the immediate response to the unprecedented situation facing individuals as a result of the COVID-19 pandemic. To assist individuals who were prevented in an intended

departure from the State due to a range of difficulties caused by the impact of the COVID-19 pandemic, and in the context of the existing force majeure concession, Revenue confirmed, where a departure from the State is prevented due to COVID-19, this will be considered a force majeure circumstance for the purpose of establishing an individual's tax residence position. Having regard to the unanticipated length of the pandemic, it is appropriate to further consider the application of this concession. In particular, the circumstances that Revenue may regard as falling within the scope of this concession. That is, the circumstances that may be regarded as giving rise to a departure from the State being prevented due to COVID-19.

An individual who had a planned departure from the State that was prevented due to any of the reasons listed below will be considered to have his or her departure from the State prevented due to COVID-19, provided all other conditions are satisfied:

- *Border controls or entry restrictions in a home country of that individual,*

The maximum length of time that may be disregarded for residence purposes due to COVID-19 under force majeure circumstances will depend on whether the individual:

1) was present in the State on or prior to 23 March 2020, or

2) travelled to the State between 24 March and 5 May 2020.

Scenario 1 – Individual present in the State on or before 23 March 2020

If an individual is present in the State on or before 23 March 2020 and his or her intended departure from the State is prevented due to COVID-19, then the period from the day after the original planned departure date up until 18 May 2020, or the actual departure date if earlier, may be disregarded for the purpose of determining his or her residence”.

30. The Commissioner has assessed the said guidance document issued by the Respondent and notes that the permitted disregarding of certain days for the purposes of determining a person's residence based on their inability to leave the State owing to travel restrictions imposed because of the Covid-19 pandemic (*force majeure in the context of COVID-19 travel restrictions*) applied only up until 18 May 2020. The Commissioner notes that the Appellant does not submit that ■ was unable to travel before 18 May 2020 and the Commissioner notes that the Appellant's claim is in respect of dates in 2021 which is when ■ claims ■ was unable to leave the State. The Commissioner having assessed all before the Commission finds that the Appellant is not entitled to rely on the provisions of the *force majeure in the context of COVID-19 travel restrictions* and the statutory

residence test and further that the Appellant is not entitled to disregard dates in 2021 for the purpose of determining ■■■ residence status in the State. The Commissioner finds that the Appellant has not established that the Respondent erred in determining that the disregarding of dates in the calculation of residence as provided for under the Covid-19 travel restrictions did not apply to the Appellant.

31. The Commissioner refers to *section 819 (1)(a) of the TCA 1997* which provides that:

(1) 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, or..

32. The Commissioner notes that section 819 (1)(a) of the TCA 1997 permits the State to tax the employment income of an individual who is in the State for over 183 days. The Commissioner notes from the Material Facts that the Appellant did not leave the State until ■ May 2021 and that he returned to the State on ■ May 2021. The Commissioner notes the Appellant does not dispute that ■ was in the State for more than 183 days in 2021.

33. The Commissioner refers to the *Ireland / UK DTA* which provides inter alia that:

“Convention between the government of Ireland and the government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains”:

Article 2: Taxes covered:

(1) The taxes which are the subject of this Convention are:

(a) in Ireland:

(i) the income tax;

34. The Commissioner refers to *Article 15 of the Ireland UK DTA* which provides inter alia that:

Article 15: Employments:

(1) Subject to the provisions of Articles 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other

Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;

35. The Commissioner refers to the provisions of *Article 15(2)(a) of the Ireland/UK DTA* which provides that

“.....remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;”,

and the Commissioner having assessed the said provisions and all the other Material Facts and the analysis carried out above finds that the evidence is that the Appellant was resident in the State for more than 183 days in 2021 and that accordingly, the provisions of Article 15(2)(a) of the Ireland/UK DTA applies.

36. The Commissioner having assessed all matters regarding this appeal finds that the Appellant has not established on the balance of probabilities that the Respondent erred in not agreeing to make a repayment/refund of Income Tax paid by the Appellant for the 2021 Income Tax Year.

Determination

37. Having assessed all the material, documentation and submissions furnished by the parties and the prevailing legislation, the Commissioner finds that the Appellant has not established on the balance of probabilities that the Respondent erred in its decision that it cannot give a repayment to the Appellant of the Income Tax paid by the Appellant for the 2021 Income Tax Year.

38. The Commissioner for the reasons set out above finds that the decision by the Respondent to refuse the Appellant’s claim for a refund of Income Tax paid by the Appellant for the 2021 Income Tax Year, further to the provisions of section 949 AL(1)(b) of the TCA 1997 shall stand.

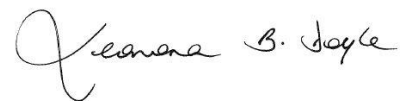
39. The Commissioner for the reasons set out above finds that the Appellant has not been successful in ■■■ appeal.
40. The Commissioner acknowledges that the Appellant was within ■■■ rights to seek an appeal of the decision of the Respondent. The Commissioner understands that the Appellant may be disappointed with the outcome of ■■■ appeal.
41. This Appeal is determined in accordance with the provisions of 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.

Notification

42. 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. This determination is final and conclusive. 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

43. 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
Appeal Commissioner
12 August 2024