



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

164TACD2024



Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction	3
Background.....	3
Legislation and Guidelines	4
Submissions	5
Appellant’s submissions	5
Respondent’s submissions	6
Material Facts	7
Analysis	8
Determination	10
Notification	10
Appeal	10

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 on behalf of [REDACTED] (“the Appellant”) in relation to a PAYE/USC Statement of Liability for the Tax Year 2021, dated 30 May 2022, which shows an amount of tax underpaid in the sum of €449.23.
2. On 7 October 2023, the Appellant duly appealed to the Commission. In accordance with the provisions of section **949U TCA 1997**, this appeal is adjudicated without a hearing.
3. The Appellant submitted a Notice of Appeal, Statement of Case and certain supporting documentation which the Commissioner has considered in this Determination. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this Determination.

Background

4. The Appellant is 87 years old. The Appellant submitted that he has always been a compliant tax payer. The Appellant and his spouse are jointly assessed for tax purposes.
5. On 6 January 2021, a Tax Credit Certificate (“TCC”) for 2021 issued to the Appellant. The TCC confirmed the Appellant was in receipt of the appropriate tax credit and rate band allocations for the 2021 tax period.
6. The TCC also confirmed that the tax credits and rate band allocation of the Appellant was reduced to collect the income tax due on the Appellant’s State Contributory Pension income from the Department of Social Protection (DSP). As a result, the Appellant was in receipt of tax credits in the amount of €440.00 and a rate band of €19,299.00 to be used against his occupational pension income. The Appellant’s spouse was in receipt of DSP carers income in 2021, which is a taxable source of income.
7. On 9 July 2021, the Appellant added the DSP carers income applicable to his spouse via myAccount on the Revenue Online System (“ROS”). However, the DSP carers income was incorrectly attributed as his own income, rather than that of his spouse, by the Respondent.
8. On 28 July 2021, the Respondent updated the Appellant’s record to correctly allocate the DSP carers income to the Appellant’s spouse. However, on doing so the Respondent inadvertently increased the employee tax credit of the Appellant’s spouse to the full value of the credit in the amount of €1,650.00, when a reduced employee tax credit in the amount of €950.90 was applicable.

9. As the Appellant was jointly assessed with his spouse, he received the benefit of the additional tax credits in the year 2021, in the sum of €699.10. On 29 July 2021, an amended TCC issued to the Appellant confirming the updated tax credit allocations in the amount of €1,139.00 for 2021, rather than the correct amount of €440.00. This led to a reduction in income tax collected from the Appellant, in the year 2021.
10. On 6 January 2022, the DSP confirmed to the Respondent that in 2021, the Appellant received €25,482.40 from his State Contributory Pension and not €25,001.60. The difference between the amounts is in the amount of €480.90. The income tax due on €480.90 was not collected in the year 2021, but the tax due on this amount was in the sum of €192.32.
11. On 28 May 2022, the Appellant submitted an income tax return for the year 2021, which included a claim for health expenses in the amount of €2,211.00. This amount generated a tax credit for health expenses, in the amount of €442.20.
12. On 30 May 2022, a Statement of Liability issued to the Appellant confirming an underpayment of €449.23. The Statement of Liability confirmed that the treatment of the underpayment would be collected by reducing the Appellant's tax credits in future years, as follows:
 - 2023 = €112.30
 - 2024 = €112.31
 - 2025 = €112.31
 - 2026 = €112.31

Legislation and Guidelines

13. The legislation relevant to this appeal is as follows:-
14. Section 126 TCA 1997, Tax treatment of certain benefits payable under Social Welfare Acts, *inter alia* provides that:-
 - (1) *In this section—*
 - “the Acts” means the Social Welfare Acts;*
 - “the Act of 2005” means the Social Welfare Consolidation Act 2005.*
 - (2) (a) *This subsection shall apply to the following benefits payable under the Acts—*

- (i) widow's (contributory) pension,*
- (ii) orphan's (contributory) allowance,*
- (iii) retirement pension, and*
- (iv) old age (contributory) pension.*

(b) Payments of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.

15. Section 112(1) TCA 1997, Basis of assessment, persons chargeable and extent of charge, 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) In this subsection, "emoluments" means anything assessable to income tax under Schedule E.

Submissions

Appellant's submissions

16. The Commissioner has set out hereunder, a summary of the submissions made by the Appellant in his Notice of Appeal and Statement of Case:-

"I am 87 and have always paid my tax on time I should not have to pay for the errors made by Revenue. After paying high medical bills it shocking not to get something back from med 1,

.....

At the present time every aspect of my own and my wife's income are known to the tax authorities.

.....

Because all of my income is known to Revenue there is no reason why they cannot stop tax from income when it is due. Allowing arrears to accrue is unfair to a fixed income pensioner.

My contention is that Revenue has the information available to tax me on my earnings as they occur.

If they cannot do this they should write off the debts that accrue from their errors.

Revenue has written off €120 million in bad debts in the past year.

Respondent's submissions

17. The Commissioner has set out hereunder, a summary of the submissions made by the Respondent in its Statement of Case:-

“Due to the allocation of the full employee tax credit, the overall record of the Appellant and his spouse saw €1,138.78 tax credits available in year to go against the [Appellant's] Pension, when the available tax credits should have been €439.68. An amended tax credit certificate (document 2) issued to the Appellant on 29 July 2021 confirming the updated tax credit allocations.

*The correct income tax that should have been deducted in year is outlined below:
€19,298.40 / 20% = €3,859.68*

€11,525.47 / 40% = €4,610.18

Total income tax due before tax credits = €8,469.86

€8,469.86 - €439.68 (correct available tax credits) = total income due for collection 2021 €8,030.18 (actual income tax collected in year during 2021 = €7,331.09). Consequently, an underpayment in year of €699.10 was due because of the additional tax credits applied in year.

Summary of 2021 underpayment

An update from DSP in January 2022 saw the DSP State Contributory amount on record amended from €25,001.60 to €25,482.40 which was due to bonus DSP payments. The difference €480.80 / 40% = €192.32 + €699.10 = €891.42 underpayment.

The Appellant submitted a Health Expenses claim for 2021 of €2,211.00 / 20% = €442.20 as part of his 2021 income tax return.

The income tax underpayment on record for 2021 = €891.42 - €442.20 = €449.22 + Universal Social Charge (USC) underpayment €0.01 = total overall underpayment for 2021 = €449.23.

The underpayment as outlined above for 2021 is correct and due and is confirmed in the Statement of Liability (SOL) issued to the Appellant on 30 May 2022 (document 3).

The under payment of €449.23 is being collected through reduction of tax credits as follows:

2023 €112.30

2024 €112.31

2025 €112.31

2026 €112.31

2022

A SOL has not yet issued in respect of the Appellant's 2022 tax position.

.....

The Respondent is sympathetic to the Appellant in this matter and will work with the Appellant to collect the outstanding liability. It is the Respondent's position that the Appellant has provided no grounds on which the Respondent has erroneously applied the provisions of the Taxes Consolidation Act 1997 and, therefore, the liability is correct and due."

Material Facts

18. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

18.1. The Appellant is 87 years old.

18.2. The Appellant and his wife are jointly assessed for the purposes of tax.

18.3. The Respondent incorrectly attributed a DSP carers income as the Appellant's own income, and not that of his spouse.

18.4. The Respondent incorrectly increased the employee tax credit of the Appellant's spouse to the full value of the credit in the sum of €1,650, when a reduced employee tax credit in the sum of €950.90 was applicable.

18.5. The result of both errors occasioned by the Respondent, was that the Appellant underpaid tax in the amount of €449.23, for the year 2021.

18.6. The Respondent has sought to collect the underpayment of tax by the Appellant, by way of a reduction in credits for future years as follows: €112.30 in 2023; €112.31 in 2024; €112.31 in 2025; and €112.31 in 2026.

Analysis

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. states 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”.

20. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

“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...”

21. The Commissioner understands that the underpayment arose herein as a result of two errors occasioned by the Respondent. Firstly, the Respondent incorrectly attributed a DSP carers income as the Appellant’s own income, and not that of his spouse.

22. Thereafter, on 28 July 2021, the Respondent updated the Appellant’s record to correctly allocate the DSP carers income to the Appellant’s spouse. However, on doing so the Respondent inadvertently increased the employee tax credit of the Appellant’s spouse to the full value of the credit in the amount of €1,650.00, when a reduced employee tax credit in the amount of €950.90 was applicable.

23. As the Appellant was jointly assessed with his spouse, he received the benefit of additional tax credits in the year 2021, in the sum of €699.10. On 29 July 2021, an amended TCC issued to the Appellant confirming the updated tax credit allocations of

€1,139.00 for 2021, rather than the correct amount of €440.00. This led to a reduction in income tax collected from the Appellant, in the year 2021.

24. The Commissioner notes that it is submitted that the Respondent sincerely regrets the errors made by the caseworker which resulted in the erroneous application of the full tax credit which contributed to the Appellant's 2021 underpayment of tax. The Respondent states that it apologises to the Appellant for the inconvenience this has caused, but that despite the circumstances of this appeal, the Respondent is satisfied that the Statement of Liability which issued to the Appellant for 2021, dated 30 May 2022, correctly reflects the final position, for the year 2021.
25. The Commissioner has considerable sympathy for the Appellant in this instance. The Commissioner does not doubt that the Appellant has always been tax compliant and that he genuinely attempted to ensure that his tax credits were properly apportioned during 2021. However, due to the errors on the part of the Respondent, it appears that some of the amendments resulted in an underpayment of tax.
26. However, in order for the Appellant's appeal to be successful, it is necessary for the Appellant to demonstrate that the Respondent was incorrect in raising the Statement of Liability for 2021. The Commissioner is satisfied that he has not done so; indeed, it appears to the Commissioner that the Appellant has not challenged the substance of the Statement of Liability at all, and stated in submissions that "*should not have to pay for the errors made by Revenue.... My contention is that Revenue has the information available to tax me on my earnings as they occur. If they cannot do this they should write off the debts that accrue from their errors*". Rather, it appears to the Commissioner that the Appellant is aggrieved at the level of customer service provided to him by the Respondent.
27. The Commissioner appreciates the frustration felt by the Appellant in his dealings with the Respondent. However, it is important to note that the Commission does not have a supervisory jurisdiction over the conduct of the Respondent, and has no jurisdiction to make findings in respect of the engagement between the Respondent and a taxpayer that do not have any material impact on whether the tax sought is due. The Commission's jurisdiction is limited to focussing on "*the assessment and the charge*", as stated by Mr Justice Murray at paragraph 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18.
28. To reiterate, the Commissioner is very sympathetic towards the Appellant in this instance, but the Commissioner is satisfied that the Appellant has not demonstrated that the

Statement of Liability for 2021 raised by the Respondent is incorrect. Therefore, the appeal cannot succeed.

Determination

29. 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 determines that the Appellant has not demonstrated that the Statement of Liability for 2021, raised by the Respondent is incorrect. Therefore, the Statement of Liability for 2012, dated 30 May 2022, stands.
30. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
31. 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, as required under section 949AJ (6) TCA 1997.

Notification

32. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

33. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.


Claire Millrine
Appeal Commissioner
15 August 2024