



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

175TACD2024

██████████

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (hereinafter “the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (hereinafter “TCA 1997”) brought on behalf of [REDACTED] (hereinafter “the Appellant”) against a decision of the Revenue Commissioners (hereinafter “the Respondent”) on 3 April 2017, to issue a Notice of Amended Assessment (“hereinafter the “assessment”) for the year ending **31 December 2011**, in the sum of [REDACTED].
2. The liabilities arose in circumstances where the Respondent assessed the Appellant as being the recipient of farm payment entitlements, namely the Single Payment Scheme (hereinafter “SPS”), paid by the Department of Agriculture, Food and Marine (hereinafter “DAFM”), which the Appellant did not include in his income tax return for the year 2011.
3. On **2 May 2017**, the Appellant duly appealed to the Commission. [REDACTED]  
[REDACTED] The Appellant was represented by [REDACTED]  
[REDACTED] and the Respondent was represented by junior counsel.

[REDACTED]

4. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

6. [REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]

■ [REDACTED]

(3)

[REDACTED]

[REDACTED]

7.

[REDACTED]

8.

[REDACTED]

■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.

[REDACTED]

[REDACTED]

[REDACTED]

**Background**

- 14. The Appellant has a number of land interests. Prior to **1 June 2011**, the Appellant farmed the lands personally and was in receipt of the SPS payment from the DAFM relating to the aforesaid lands.
- 15. On **31 May 2011**, the Appellant incorporated his farming business under the company name [REDACTED]. A copy of the minutes of the first meeting of the Directors of [REDACTED] has been submitted by the Appellant. From **1 June 2011** onwards, [REDACTED] commenced trading. [REDACTED] carried out all of the farming activities and the Appellant transferred all of his stock and machinery of the farming trade to [REDACTED].
- 16. On **8 June 2011**, the Appellant and his spouse entered into a lease agreement with [REDACTED] for a period of 4 years and 7 months, in relation to 35 acres of land that they owned jointly. In addition, the Appellant entered into a lease agreement with [REDACTED] for 4 years and 7 months, in relation to 20 acres of land. On 1 October 2012, [REDACTED] entered into a lease agreement with [REDACTED] for a period of 3 years, for 303 acres of land at Castletown.
- 17. On **29 June 2011**, the DAFM confirmed that the herd owner was [REDACTED] and the Appellant was the herd keeper. The Appellant has submitted correspondence from the DAFM in this regard which cites the herd number.
- 18. However, the SPS entitlements were not transferred to [REDACTED] and remained in the Appellant's name until **2012**, as all payment applications must be made to the DAFM prior to **15 May** in any given year and amendments made up to **31 May**, in any given year.

19. In **October 2011**, the 2011 SPS payment from the DAFM in the sum of ██████ was paid to the bank account of the Appellant. The Appellant then subsequently transferred the amount to the bank account of ██████
20. The Appellant did not include the SPS payment in his income tax return for 2011. Rather, the SPS payment was included in ██████ Corporation Tax return for the year ended 31 May 2012.
21. In **May 2012**, the Appellant applied to the DAFM to transfer the SPS entitlements from the Appellant to ██████
22. On **28 May 2014**, a Notification of a Revenue Audit issued to the Appellant. The correspondence informed the Appellant that the scope of the audit was all relevant taxes and duties for the period 1 January 2011 to 31 December 2011. Between the date of the notification of the audit and 31 January 2017, the parties liaised in relation to the tax treatment of the SPS payment.
23. On **3 April 2017**, in accordance with section 955 TCA 1997, the Respondent issued a Notice of Amended Assessment to income tax for the year ending 31 December 2011, in the sum of ██████ the subject matter of this appeal.
24. The core substantive issue in this appeal is whether the SPS payment from the DAFM, during the year under appeal, namely 2011, is taxable as income in the hands of the Appellant, as contended by the Respondent or is instead, taxable as income received by ██████, as contended by the Appellant.

### **Legislation and Guidelines**

25. The legislation relevant to this appeal is as follows:-

26. *Section 18(1) TCA 1997, Schedule D, inter alia provides:-*

*(1) The Schedule referred to as Schedule D is as follows:*

*(i) SCHEDULE D*

*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, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains.

(2) Tax under Schedule D shall be charged under the following Cases:

Case I – Tax in respect of –

(a) any trade

.....

Case IV – Tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule;

.....

## **Evidence and Submissions**

### *Appellant's evidence*

27. The Appellant gave sworn evidence in relation to his appeal. The Commissioner sets out hereunder a summary of his evidence:-

- (i) The Appellant stated that when he discussed setting up a company with his accountant, there were very few companies at the time. The Appellant testified that his accountant had extensive knowledge in this area and that he was advised to establish the company and change the herd number to [REDACTED]
- (ii) The Appellant stated that with the SPS payment, he would often have to clarify matters, because it was not always in "layman's language". The Appellant said

specifically, he would seek to clarify matters with the DAFM offices in [REDACTED]. The Appellant said that he told the representative in the DAFM that he was establishing a company at the end of May, but was advised that he had to apply for the SPS entitlements before the date of 15 May. The Appellant said that he was advised to change the herd number, but as it would not be changed by that date, he was advised to apply for the payment of the SPS entitlements in his own name using his herd number and that the Department would then change the herd number. The Appellant stated that he was advised that if he did not do this, he might lose his SPS entitlements.

- (iii) The Appellant said that [REDACTED] was established on 30 May 2011. The Appellant confirmed that this was new at the time and that [REDACTED] was one of the first companies set up. The Appellant stated that he had worked for 35 years to build his SPS entitlements and has relied on those SPS entitlements. The Appellant testified that he would not do anything to risk losing his SPS entitlements and would not do anything to put them at risk.
- (iv) The Appellant confirmed that from May 2011, he requested that the SPS entitlements payment would be made to [REDACTED] and he sent the details of [REDACTED] bank account number to the DAFM. The Appellant stated that he wanted to ensure that the payment was sent to [REDACTED] bank account and not his personal account. The Appellant testified that everything was 100% above board and that he was relying on the advice of the DAFM, [REDACTED] and Teagasc.
- (v) The Appellant gave evidence that the advice was that the SPS entitlements were linked to the herd number and that in circumstances where the herd number had been transferred, he did not own the SPS entitlements. The Appellant stated that it was a clerical issue that the payment of the SPS entitlements was made to his account, as opposed to the bank account of [REDACTED] which had been provided to the DAFM.

28. [REDACTED] ("the Appellant's witness 1") gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) The witness confirmed that he is an Agricultural Consultant, holds a Bachelor of Science and is also a licensed auctioneer and valuer. The witness stated that he has 35 years' experience working as an Agricultural Consultant, and he specialises in working as a management consultant to dairy farmers. The witness relayed the historical background to the SPS entitlement payments from the DAFM.



- (ii) The witness said that a farmer must apply for the SPS entitlement payment prior to the 15 May each year and that it is a stressful time for the sector, as any amendments are only permitted up to 31 May in any year. The witness stated that if either of the deadlines are missed, then the application or transfer will not be effected.
- (iii) The witness testified that the ideal time to set up a company was in January, because a farmer had from January until 15 May, "to get his ducks in order". The witness said that what is normally done in that scenario, is that there is a transfer of the herd number from the individual to the company's name and which is submitted to the District Veterinary Office, a part of the DAFM. The witness stated that the next step is that there is a transfer of the SPS entitlements from the individual into the company, because the company is going to commence trading and the individual is going to cease trading as a farmer. That transfer has to be completed by the deadline of 15 May in any given year. The witness said that the herd number and the SPS entitlements must be transferred and if that was done, then an application must be made in the company's name, before the deadline of 15 May.
- (iv) The witness gave evidence that in relation to the Appellant, it was clear that he ceased trading as an individual and commenced trading as a company sometime in early June. The witness stated that the Appellant could not transfer the entitlements into the company name, on the DAFM system, because the relevant dates had passed. The witness stated that he would normally recommend, to ensure the flow of money continues, that an application to transfer the herd number from the individual to the company was not made until after 15 December in any given year, even though the company may have commenced trading. The witness confirmed that there would usually be one year where the SPS entitlement payments would arrive into the sole trader's own bank account at the back end of the year, even though trading had commenced in a company earlier in the year. The witness stated that such a scenario would be common enough. The witness gave evidence that he would always advise that entitlements should not be lost.
- (v) The witness testified that at that time in 2011, not many farmers had incorporated companies. The witness testified that the DAFM would not have been overly familiar with dealing with companies and that farmers were engaging with three different sections in the DAFM. The witness said that in his view, the farmer was

the person controlling the land, the stock, the machinery, the entitlements and the bank account and the SPS entitlements are in that list, it is all a package.

- (vi) The witness stated that there was no provision for apportioning the SPS entitlements, one payment is made based on the application, at the relevant date being 15 May. The witness testified that this was done from an administrative point of view, as the DAFM deals with so many applications. During cross examination, the witness accepted that if a company was incorporated after that date, then it would not be the company that would get the payment, because the company did not hold the SPS entitlements. The witness gave evidence that the company cannot draw down the payment, but the individual might make a legal decision to draw up a document to transfer the payment to the company. The witness stated that there is no grace period after 15 May.
- (vii) The witness confirmed that he is not a tax consultant, he is an Agricultural Consultant. The witness stated that he would advise his clients to obtain taxation advice, in relation to the payments.

29. [REDACTED] ("the Appellant's witness 2") gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of his evidence:-

- (i) The witness stated that until December 2022, he was the [REDACTED]. The witness confirmed that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].
- (ii) The witness testified that the herd number is an identifier within the DAFM of activity that was carried on, that it is akin to a PPS number, as an identifier of the activity by a farmer. The witness stated that the problem with the SPS entitlements was that there are two dates set down for administration purposes, namely 15 and 31 May and the SPS entitlements follow the herd number. The witness stated that herein, the position was that there was an identical herd number that was with the Appellant and then with the company, so the same herd number that the Appellant had, continued on to [REDACTED]
- (iii) The witness testified that in 2011, the authority on the SPS entitlements was the DAFM and that there was deference to the DAFM on anything to do with the SPS entitlements. The witness stated that it was still the case that [REDACTED] would link in

with advisors on herd numbers, transfers of SPS entitlements and any other matters relating to SPS entitlements.

- (iv) During cross examination, the witness confirmed that it was his view that the SPS entitlements in this appeal had travelled with the herd number, because when the herd number was transferred in June 2011, it was the same herd number. The witness testified that the SPS entitlements were paid under that herd number. The witness stated that it was his view that an applicant cannot be paid, unless an applicant has a herd number. The Appellant's herd number had transferred to [REDACTED]. It was the identical herd number.
- (v) The witness gave evidence that, for administrative purposes, there was only one time in the year that a farmer could transfer entitlements and that was prior to 31 May in any given year.

#### *Appellant's submissions*

30. Legal submissions were made on behalf of the Appellant by the Appellant's Agent. The Commissioner sets out hereunder a summary of the submissions:-

- (i) The Appellant established [REDACTED] transferred the herd number and all machinery to [REDACTED], leased land to [REDACTED] established a bank account for [REDACTED], which the SPS entitlements payment was transferred to, but the Appellant was not in a position to transfer his SPS entitlements to [REDACTED] until the following year, due to the administrative workings of the DAFM. The Appellant attempted to transfer the entitlements in 2011, but was informed that he had missed the transfer window, which was prior to May 2011.
- (ii) It was an administrative matter that an application must be made on or before 15 May in any given year, as there were 186,000 applicants at that time.
- (iii) Reference was made to the decision in *EP O'Coindealbhain v. The Honourable Mr. Justice Sean Gannon* [1986] IR 154 and 79TACD2021. It was a completely different situation here. In addition, the decision in *J D Dolan (Inspector of Taxes) v "K" National School Teacher* [1943] IR 470 ("*Dolan v K*") can be distinguished on its facts.
- (iv) The Appellant derived no benefit from the entitlements which were paid directly to [REDACTED] and utilised by [REDACTED] held the herd number and was the active farmer. Therefore, the Appellant was not entitled to utilise the payment.

- (v) It was the Appellant's understanding that once ██████ was incorporated on 30 May 2011 and commenced trading on 1 June 2011, the fact that the DAFM could not change the SPS entitlements to ██████, was due to an administrative reason only. The entitlements went with ██████
- (vi) Consideration should be given to the use of accounting treatment, so that the SPS entitlements payment would be an accrual of up to five twelfths to the Appellant and seven twelfths to ██████. Further, costs must be considered if the SPS entitlements payment is determined to be income in the hands of the Appellant.

*Respondent's evidence*

31. ██████ ("the Respondent's witness 1") gave sworn evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of his evidence:

- (i) The witness stated that he was a ██████ with the Respondent in the ██████ office, ██████. The witness confirmed that he commenced working on the Appellant's file in early to mid-2016, but that there was another employee of the Respondent dealing with the file prior to this date.
- (ii) The witness testified that there was ongoing discussions between the parties as to the correct tax treatment of the SPS entitlements payment and that the Respondent was of the view that the SPS entitlements payment was income in the hands of the Appellant and not ██████. The witness said that every effort was being made to reach agreement on this point.
- (iii) The witness submitted that it was agreed that the assessment would not issue until discussions had concluded. The witness mentioned that there were several conversations conducted by telephone in early 2017, wherein the Appellant's representatives requested that the assessment not issue at that point. The witness confirmed that a meeting took place in ██████, with the Appellant's Agent and the Respondent, but no agreement was reached. Consequently, the assessment issued thereafter.

*Respondent's submissions*

32. Legal submissions were made on behalf of the Respondent by counsel for the Respondent. The Commissioner sets out hereunder a summary of the submissions:-

- (i) The evidence of the Respondent's witness 1 was that there was discussion in relation to how to address the payment, with the Appellant's Agent stating that it could be apportioned. Further, it is acknowledged in the Appellant's submissions,

that the portion of the SPS entitlements payment which relates to the period pre incorporation of DTFL, are properly taxable in the name of the Appellant.

- (ii) Reference was made to the Respondent's Tax Briefing number 61. In particular reference was made to paragraphs 1.3, 1.4, 1.5, 1.6, 2.1, 2.7, 2.12 and 2.17. Reference was also made to the European Council Regulation 1782/2003 ("hereinafter "the Regulation"), establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and various sections therein.
- (iii) The argument that due to the herd number being changed by the Appellant, the payment belongs to █████, is misconceived and wrong. There was no application to transfer the SPS entitlements from the Appellant to █████ and no basis in law for the transfer of the payment of SPS entitlements to █████ for 2011. The Appellant made the application, he was the person that was entitled to receive the payment based on his application, his holding, his declaration and his herd number, at the critical date of 15 May 2011. No transfer of SPS entitlements was made at any time prior to that critical date. The guidelines were not complied with nor was the European Council Regulation complied with. The person that was entitled to the payment of the SPS entitlements was the Appellant, not █████. Reference was made to the decision in *Dolan v K*.

### **Material Facts**

33. Having considered the documentation submitted in this appeal and the transcript of the oral evidence adduced and legal submissions made by the parties at the hearing of the appeal, the Commissioner makes the following findings of material fact:

- (i) Prior to 1 June 2011, the Appellant personally farmed his lands.
- (ii) On 31 May 2011, the Appellant incorporated his farming business under the company name █████ held its first meeting.
- (iii) From 1 June 2011 onwards, █████ commenced trading, whereby it carried out all of the farming activities and the Appellant transferred all of his stock and machinery of the farming trade to █████
- (iv) On 8 June 2011, the Appellant and his spouse entered into a lease agreement with █████ for a period of 4 years and 7 months for 35 acres which they jointly owned.
- (v) On 8 June 2011, the Appellant entered into a lease agreement with █████ for 4 years and 7 months for 20 acres.

- (vi) On 29 June 2011, the herd number was transferred to [REDACTED]
- (vii) In May 2012, the Appellant applied to the DAFM to transfer the SPS entitlements to [REDACTED]
- (viii) On 1 October 2012 [REDACTED] entered into a lease agreement with [REDACTED] for 303 acres at [REDACTED] for a period of 3 years.
- (ix) Applications for SPS entitlements must be made to the DAFM prior to 15 May in any given year and transfer or amendments must be prior to 31 May in any given year.
- (x) The SPS entitlements payment from the DAFM was paid directly into the bank account of the Appellant and immediately transferred to the bank account of [REDACTED]
- (xi) The SPS entitlements payment from the DAFM for 2011, was returned by [REDACTED] in its corporation tax return.

### **Analysis**

34. The liabilities in respect of which the assessment was raised by the Respondent related to the Appellant's SPS entitlement, whereby the Appellant received a payment from the DAFM in 2011, in the amount of [REDACTED], which had not been included in the Appellant's income tax return for that year. The genesis of the dispute between the parties was the Appellant's decision to transfer his farm business to [REDACTED] in 2011 and an SPS entitlement that was paid to the Appellant for that year, which he immediately transferred to [REDACTED]. The Appellant then returned this income for 2011, as income of [REDACTED] and not as income of the Appellant.

35. Thus, the Commissioner is satisfied that the substantive issue for consideration in the Appellant's appeal herein, relates to the correct tax treatment of a SPS payment received from the DAFM for the year 2011.

36. It is a fact in this appeal that the Respondent has treated the entirety of the SPS entitlement payment as income in the hands of the Appellant, rather than [REDACTED] and assessed the Appellant's additional liability for income tax in the sum of [REDACTED]

### *Income in the hands of the Appellant v [REDACTED]*

37. 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. stated 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”.*

38. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he stated 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...”*

39. The Commissioner now turns to the particular facts of this appeal and the circumstances surrounding the raising of the amended assessment by the Respondent. The Appellant submitted in its Supplementary Submissions that the SPS entitlement *“is a subsidy towards agricultural production costs given by reference to specific land area. The reason for this is to avoid agricultural subsidies for specific agricultural produce as it could give rise to competition issues between different agricultural produce”*.<sup>1</sup> [Emphasis added]

40. The evidence adduced supported the Appellant’s position that the Appellant established ██████ in May 2011. This is not in dispute between the parties. Furthermore, the Commissioner considers that the evidence adduced by the Appellant supported the narrative that at that time, the Appellant commenced the transfer of his stock and machinery to ██████, to enable ██████ to carry on the farming trade.

41. Moreover, the Commissioner is satisfied from the evidence adduced and documents submitted, namely correspondence from the DAFM dated 29 June 2011, that the herd owner was ██████ and the herd keeper was the Appellant. In addition, the Commissioner notes that certain lands were leased to ██████ during the period June 2011. The Appellant testified that he took all steps necessary to ensure that it was ██████ and not the Appellant that was the farmer. The Commissioner considered the Appellant to be a credible witness and his evidence believable, such that it was the Appellant’s intention that ██████ was to engage in the farming trade and that he was no longer the farmer, rather ██████ was the farmer.

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<sup>1</sup> Appellant Supplementary Submission

42. Nevertheless, the Commissioner notes that the Appellant accepted in his Outline of Arguments submitted in this appeal, that there was no application made to transfer the SPS entitlements from the Appellant to ██████, until May 2012. At paragraph 12 of the Outline of Arguments filed on behalf of the Appellant it stated that “[t]here was no application to transfer the entitlements from [the Appellant] until May 2012”.
43. The Commissioner understands from the evidence adduced that in or around May/June 2011, the Appellant communicated at length with the DAFM around the transfer of the SPS entitlements to ██████. However, the Commissioner observes the Appellant’s evidence that he had in effect “missed the transfer window”, as applications to transfer SPS entitlements, must have been made to the DAFM prior to 31 May in any year. The Appellant’s witnesses corroborated that evidence, such that it was confirmed that applications for the SPS entitlements must be completed prior to 15 May in any year. Moreover, it was not possible to effect a transfer of the SPS entitlements after 31 May in any given year. The Appellant’s witness 1 stated that this was due to administrative reasons within the DAFM.
44. Thus, the Commissioner is satisfied that the Appellant’s SPS entitlements were not transferred from the Appellant’s name to ██████ until May 2012, despite attempts by the Appellant to effect the transfer of the SPS entitlements, following the incorporation of
- ██████ There is no dispute between the parties that the application for the SPS entitlements must be completed by 15 May in any given year and that it is not possible to effect a transfer of the SPS entitlements after 31 May in any given year. The dispute is in relation to whether there was merely an outstanding administrative step, to effect the transfer of the SPS entitlements to ██████ following the transfer of the herd number to the ██████, as contended for by the Appellant. The Respondent does not accept that it was an outstanding administrative step and the Respondent argued that the SPS entitlements are linked to land, at a particular time, when the application is made. Thus, when the Appellant made the application for the SPS entitlements it was on the basis of the lands he held at that time.
45. Furthermore, the Commissioner notes that it appears from the evidence adduced that the Appellant was advised of the timelines by his tax Agent and the Appellant’s evidence was that the DAFM advised him to apply for the SPS entitlements in his own name for the year 2011, due to the looming timelines involved and the risk that the SPS entitlements might be lost for the year 2011, if he sought to complete the transfer of SPS entitlements after 31 May. Hence, the payment of the SPS entitlements were made to bank account of the Appellant not ██████. It was not in dispute that the SPS entitlements were paid to the Appellant’s personal bank account in 2011, and was then transferred from the Appellant’s



bank account to the bank account of [REDACTED]. That is a material fact that the Commissioner has found in this appeal.

46. The Appellant argued that the transfer of the herd number registration to [REDACTED] was important for two reasons namely; it reflected the fact that the livestock were transferred to the company as part of the farming business transfer; and it gave rise to a situation whereby the legal right to the SPS entitlements for 2011, could only be with [REDACTED], as the SPS entitlements follow the herd number.<sup>2</sup> The Appellant submitted that the party legally entitled to the SPS entitlements was the holder of the registered herd number, and it was a fact that at the time the SPS entitlements were paid for the year 2011, the DAFM records stated that the holder of the herd number was [REDACTED] not the Appellant. Therefore, it was [REDACTED] being the holder of the herd number that was entitled to the payment of the SPS entitlements for 2011, not the Appellant. The Commissioner notes that the Appellant also argued in its Supplementary Submissions that the SPS entitlements are linked to the land as opposed to the herd number.

47. The Respondent argued that in circumstances where the Appellant was the legal owner of the SPS entitlements and the recipient of the payment, the income should have been taxable in the Appellant's Form 11, for the year 2011. The Respondent submitted that it is clear from the documentation from the DAFM that the payment of the SPS entitlement for 2011, was made to the Appellant in his own right. Moreover, [REDACTED] was not registered as the transferee or holder of the Appellant's entitlements in 2011.

48. The Respondent referred the Commissioner to the Respondent's document entitled "Tax Briefing No. 61" and the Regulation. Counsel for the Respondent submitted *inter alia* that in accordance with section 1.4 of the Tax Briefing No. 61, before receiving a payment under the scheme, each farmer must establish a payment entitlement. Moreover, counsel for the Respondent submitted that the entitlement to the SPS is predicated on the application and the application is based on the land that is held at that time and the activity that is carried out at that time. It is much more complex than what was contended for by the Appellant i.e. sending a letter requesting a change to the SPS entitlements.

49. The Commissioner notes Article 34(2) of the Regulation, in relation to applications, wherein it states that:

*"Farmers shall apply to the single payment scheme by a date, to be fixed by Member States, but not later than 15 May"*

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<sup>2</sup> Appellant Supplementary Submission

50. In addition, the Commissioner notes Article 43 of the Regulation, in relation to the determination of the payment entitlements, wherein it states that:

*“Without prejudice to Article 48, a farmer shall receive a payment entitlement per hectare which is calculated by dividing the reference amount by the three-year average number of all hectares which in the reference period gave right to direct payments listed in Annex VI. The total number of payment entitlements shall be equal to the above mentioned average number of hectares.”*

51. The Respondent submitted that the argument that the herd number was changed therefore the payment should go to ██████ rather than the Appellant, is incorrect. There must be an application to transfer the entitlements and that was not done until 2012. The evidence of the Appellant was that he did not make an application to transfer his SPS entitlements in 2011.<sup>3</sup>

52. The Commissioner is satisfied that having regard to Article 43 of the Regulation, the SPS entitlements are linked to the land and not the herd number as contended for by the Appellant. This is despite the Appellant’s submissions also suggesting that SPS entitlements are attached to the land.

53. The Respondent directed the Commissioner to the decision in *J D Dolan (Inspector of Taxes) v “K” National School Teacher* [1943] I TR 656 (*“Dolan v K”*). The taxpayer in that decision was a nun and a qualified national school teacher. She was employed at a national school conducted by her order. The nun handed over her income to the order and the proceeds were credited as income of the order. The Supreme Court found that a professed nun, in receipt of a salary as a teacher, who paid that salary over to the order, was liable to income tax on the salary, because she received it before paying it over. The mere fact that a taxpayer does not apply their income for their own benefit, does not excuse the taxpayer from paying tax on it. It is a well-established principle that the mode of application of profits does not affect the liability to pay tax. The nun’s obligation to hand over her salary for the benefit of the order does not affect her liability to pay income tax. The Respondent submitted that the Appellant was the person holding the SPS entitlement and received the payment.

54. In addition, the Respondent directed the Commissioner to the Commission’s decision in *79TACD2021* which counsel for the Respondent argued was similar to this appeal. The Appellant submitted that this decision can be distinguished on the basis that the Appellant herein immediately informed the DAFM about ██████ and sought to effect the transfer of

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<sup>3</sup> Transcript, Day 1, page 84

his SPS entitlements. However, the DAFM for administrative reasons could not effect the transfer.

55. Having regard to the totality of the evidence and submissions in this appeal, the Commissioner is satisfied that for the year 2011, the SPS entitlements were at all material times registered in the name of the Appellant. Such an entitlement enables the holder to apply for a payment from the DAFM each year during the currency of the scheme. The Appellant duly applied for such payment and received the payment from the DAFM in his own name for 2011. Whilst the Commissioner accepts the evidence that the Appellant liaised with the DAFM during 2011 to transfer the entitlements to [REDACTED], his own evidence was that the transfer of the SPS entitlements did not occur until 2012, when the application to transfer the SPS entitlements from the Appellant to [REDACTED] was made. The Commissioner notes that the reason for the transfer of his SPS entitlements in 2012, was concern that the Appellant would lose the SPS entitlements entirely for 2011, as he had in effect “missed the transfer window” which was 31 May in any year. The Appellant’s evidence was that he was advised to apply in his own name and then transfer the following year and that was what he did. Hence, the Commissioner finds that [REDACTED] was never entitled in law to receive the payment in relation to the SPS entitlements from the DAFM during 2011, as [REDACTED] was not the registered holder of the SPS entitlements at the time of the application in 2011.
56. The Appellant candidly accepted that this was a conscious and deliberate decision not to transfer the SPS entitlements to [REDACTED] in 2011, as this would have resulted in a potential loss of SPS entitlements for the year 2011, having regard to the fact that the transfer was not effected prior to 31 May 2011 and the Appellant had made the application in his own name prior to 15 May 2011. Thus the Commissioner is satisfied that the Appellant was the person entitled to receive the payment of the SPS entitlements based on his application, based on his holding, based on his declaration and based on his herd number at the critical date of on or before 15 May 2011. Article 34 of the Regulation is clear in its terms such that applications must be made for payment no later than 15 May. There was no transfer of the Appellant’s SPS entitlements made at any time prior to 31 May 2011, which is the deadline imposed by the DAFM. Whilst 31 May is a deadline set by the DAFM, the crux of the issue is that the SPS entitlements remained in the Appellant’s name until 2012.
57. For completeness the Commissioner will address two further arguments made by the Appellant. Firstly, the Appellant submitted that if the Commissioner finds that the Appellant was entitled to payment of the SPS entitlements for 2011, and not [REDACTED] the amount should be apportioned as an accrual for five twelfths to the Appellant and seven twelfths

to [REDACTED] In that regard, the Commissioner was directed to the Respondent's Tax and Duty Manual, Part 23-01-35, entitled "Taxation of Farm Payments Basic Payments Scheme".

58. Secondly, the Appellant argued that he had incurred production costs up to 31 May 2011, before [REDACTED] was incorporated and that the Appellant's accounts clearly identify costs incurred by the Appellant for that period. Therefore, these costs should be taken into consideration when ascertaining the charge to tax. Nevertheless, the Commissioner was not furnished with any vouched receipts in relation to such alleged costs and/or expenses. The Commissioner is satisfied that the Appellant has not discharged the burden of proving that there were costs and expenses incurred by the Appellant during 2011, that would persuade the Commissioner to vary the assessment raised by the Respondent herein.
59. Moreover, in relation to the argument that the Commissioner should apportion the amount of the SPS entitlements for 2011, having regard to the fact that [REDACTED] was established on 1 June 2011 and commenced trading, the Commissioner notes that the DAFM made payments to the Appellant in October 2011. The payments were made for the calendar year 2011 and no transfer of SPS entitlements to [REDACTED] occurred, until 2012. Having regard to those facts, which the Commissioner has found to be material in this appeal, the Commissioner is satisfied that there is no basis for the Commissioner to find that there should be an apportionment made herein. The payment was made to the Appellant as the person holding the SPS entitlements for 2011.
60. The Commissioner is satisfied on the balance of probabilities that the Appellant was the holder of the SPS entitlements for 2011. Any argument made in relation to [REDACTED] being liable for the payment on the basis of the transfer of monies to [REDACTED] immediately on receipt of the payment by the Appellant cannot succeed, having regard to the Supreme Court decision in *Dolan v K*. The application of the monies thereafter is irrelevant to the Appellant's liability to pay the tax on the income the Appellant received on foot of his SPS entitlements.
61. Section 18(1)(a)(i) TCA 1997 provides that a charge to tax under Schedule D arises in respect of "*the annual profits or gains arising or accruing to....any person residing in the State from any kind of property whatever*". Section 18(2) TCA 1997 provides that tax under Schedule D shall be charged under Case IV in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule.
62. The Commissioner is satisfied that the Appellant has not shown that the Respondent was incorrect to raise the assessment to income tax under Case IV of Schedule D in respect of the payments which the Appellant received by virtue of his SPS entitlements. Hence, the appeal fails.

## Determination

63. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the tax is not payable. Therefore, the Notice of Amended Assessment for the year ending **31 December 2011**, in the sum of [REDACTED] shall stand.
64. 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 check to see whether his legal rights were correctly applied.
65. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine  
Appeal Commissioner  
6 September 2024