



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

179TACD2024

██████████ (Executor of ██████████)

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”) to refuse the Appellant’s claim for a refund in respect of health expenses incurred by [REDACTED] late [REDACTED] in 2018 and by [REDACTED] late [REDACTED] estate in 2019.
2. In accordance with the provisions of section 949U of the TCA 1997 and the agreement of the parties this appeal is adjudicated and determined without a hearing.

Background

3. On [REDACTED] [REDACTED] 2023 the Appellant filed an enquiry with the Respondent via the MyEnquiries.ie portal as to whether [REDACTED] was entitled to receive a refund of health expenses in respect of [REDACTED] late [REDACTED]. The Appellant advised the Respondent that [REDACTED] late [REDACTED] [REDACTED] died on [REDACTED] and [REDACTED] was the Executor of [REDACTED] Will. The Appellant stated that [REDACTED] had been residing in a nursing home from [REDACTED] [REDACTED] until the date of [REDACTED] death ([REDACTED]) and that payment for [REDACTED] stay at the nursing home was made under the Fair Deal/ HSE Nursing Home Loan Scheme (“Nursing Home Loan Scheme”). The Appellant further stated that in compliance with the Nursing Home Loan Scheme during [REDACTED] late [REDACTED] residence in the nursing home a deduction of 80% was made from [REDACTED] pension payment in favour of the Nursing Home Loan Scheme. The Appellant further stated that in further compliance with the Nursing Home Loan Scheme the Appellant repaid the sum of €[REDACTED] to the HSE from the proceeds of the sale of [REDACTED] late [REDACTED] home in [REDACTED].
4. On [REDACTED] 2023 the Respondent advised the Appellant that it is was not then possible to make any claims in respect of years prior to 2019 due to the four year limit for making claims. The Respondent advised the Appellant to examine the terms of the Nursing Home Loan Scheme and provided a link/URL address to access information about the Nursing Home Loan Scheme.
5. On [REDACTED] 2023 the Respondent wrote to the Appellant and advised inter alia as follows:

“Generally, it is possible to reclaim a refund of nursing home fees however they are claimed against tax that the individual has already paid in that year, 2018 in this case. I have reviewed your [REDACTED] pay and tax files and unfortunately as [REDACTED] did not pay any tax in 2018, no refund of nursing home fees can be given. I refer you to Tax and Duty

Manual Part 15-01-12 The Nursing Home Support Scheme (The "Fair Deal" which I have attached for you. If your late [REDACTED] had paid tax in 2018, [REDACTED] would have had to file a tax return – Form 12 by the 31/12/2022 to claim any refund due to [REDACTED]. As you have contacted Revenue in 2023 regarding this matter, it is outside the 4-year limit rule and is not be allowable under Section 865 of the Taxes Consolidation Act 1997. In this case it would not have made any difference if a tax return had been filed as your late [REDACTED] did not pay any tax in 2018.”

“While Revenue acknowledges the circumstances and the reasons why there was no tax returns filed, unfortunately, there are no mitigating circumstances”.

“The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997”.

6. On [REDACTED] 2023 the Appellant submitted [REDACTED] Notice of Appeal to the Commission. The Appellant makes the following submissions and claims:

“I am the Executor of the will of my late [REDACTED]. My [REDACTED] was resident in [REDACTED], from [REDACTED] until [REDACTED] death on [REDACTED], under the Fair Deal/ Nursing Home Loan. My [REDACTED] was in receipt of the Nursing Home Loan (Ancillary State Support, and [REDACTED] estate repaid the sum of € [REDACTED] to the HSE in [REDACTED]. The Revenue website states under the section Health Expenses/ Nursing Home and Additional Care Expenses "Note The loan is paid directly by the HSE to the nursing home. You cannot claim health expenses on the amount paid by the HSE to the nursing home. When the loan is repaid, you or your estate can claim health expenses on the amount repaid." As such, I believe that my [REDACTED] estate is due a tax refund.”

7. On [REDACTED] 2024 the Appellant submitted [REDACTED] Statement of Case to the Commission.
8. On [REDACTED] 2024 the Respondent submitted its Statement of Case to the Commission

Legislation and Guidelines

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

Section 469 of the TCA 1997: Relief for health expenses; provides inter alia

(1)In this section –

“appropriate percentage”, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

“health care” means prevention, diagnosis, alleviation or treatment of an ailment, injury, infirmity, defect or disability, and includes care received by a woman in respect of a pregnancy, but does not include—...

“health expenses” means expenses in respect of the provision of health care, being expenses representing the cost of –

(a) the services of a practitioner,

(b) diagnostic procedures carried out on the advice of a practitioner,

(c) maintenance or treatment necessarily incurred in connection with the services or procedures referred to in paragraph (a) or (b),

(d) drugs or medicines supplied on the prescription of a practitioner,

(e) the supply, maintenance or repair of any medical, surgical, dental or nursing appliance used on the advice of a practitioner,

(f) physiotherapy or similar treatment prescribed by a practitioner,

(g) orthoptic or similar treatment prescribed by a practitioner,

(h) transport by ambulance, or....

“specified amount”, in relation to a year of assessment, means the amount of expenditure which qualifies for income tax relief in accordance with this section;

(2) (a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—

(i) the amount equal to the appropriate percentage of the specified amount, and

(ii) the amount which reduces that income tax to nil,

but, where an individual proves that he or she defrayed health expenses incurred for the provision of health care in the nature of maintenance or treatment in a nursing home, other than a nursing home which does not provide access to 24 hour nursing care on-site, the individual shall be entitled for the purpose of ascertaining the amount

of the income on which he or she is to be charged to income tax, to have a deduction made from his or her total income of the amount proved to have been so defrayed.

(3) For the purposes of this section –

(b) any expenses defrayed out of the estate of a deceased person by his or her executor or administrator shall be deemed to have been defrayed by the deceased person immediately before his or her death, and

(c) expenses shall be regarded as not having been defrayed in so far as any sum in respect of, or by reference to, the health care to which they relate has been, or is to be, received, directly or indirectly, by the individual or the individual's estate, or by any dependant of the individual or such dependant's estate, from any public or local authority or under any contract of insurance or by means of compensation or otherwise.

(5) In making a claim for a deduction under this section, an individual who, after the end of the year of assessment for which the claim is made, has defrayed or is deemed to have defrayed any expenses relating to health care provided in that year may elect that all deductions to be allowed to him or her under this section for that year and for subsequent years of assessment shall be determined as if those expenses had been defrayed at the time when the health care to which they relate was provided.

(6) Notwithstanding sections 458(2) and 459(2) –

(a) any claim for a deduction under this section –

(i) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and

(ii) shall be accompanied by such statements in writing as regards any class of expenses by reference to which the deduction is claimed, including statements by persons to whom payments were made, as may be indicated by the prescribed form as being required as regard expenses of that class, and

(b) in all cases relief from tax consequent on the allowance of a deduction under this section shall be given by means of repayment.

(7) Where relief is given under this section to any individual in respect of an amount used to defray health expenses, relief shall not be given under any other provision of the Income Tax Acts to that individual in respect of that amount.

Tax and Duty Manual Part 15-01-12 The Nursing Home Support Scheme:

4.1.2 Claiming tax relief following the end of the year of assessment:

Taxpayers in receipt of PAYE income only who wish to claim relief for health expenses and nursing home fees after the end of the year of assessment can do so by submitting an annual income tax return. This can be done by accessing the 'Review your Tax' card in myAccount. Taxpayers claiming relief on an annual income tax return can manage and keep track of their health expenses and other receipts on the Receipts Tracker service in MyAccount and ROS. Where relief is claimed after the end of the year of assessment, the claimant will receive a refund equal to the full amount of relief due. This is subject to the Tax and Duty Manual Part 15-01-12 requirement that the total amount of income tax paid by the individual in the relevant year of assessment exceeds the amount of relief due.

4.5 Death Cases

Section 469(3)(b) TCA 1997 provides that amounts paid out of the estate of a deceased person in respect of health expenses, as defined in section 469 TCA 1997, may be allowed against the tax liability of the deceased individual. Any payment defrayed out of the estate of a deceased person by his or her executor or administrator is deemed to have been defrayed by the deceased person immediately before his or her death. Such payments may be claimed under the heading of health expenses against the tax liability of the deceased person by the executor of his or her estate.

The Nursing Home Support Scheme (The "Fair Deal"): Tax Relief Available:

Section 469(2)(b) TCA 1997 provides that individuals who avail of financial support under the Fair Deal Scheme may claim income tax relief in respect of any contributions paid for nursing home care based on their own income and assets.

If the contribution is paid by another individual (such as a relative), that individual will be entitled to relief instead.

Amounts covered by the HSE do not qualify for tax relief in accordance with section 469(2)(c) TCA 1997.

Section 469(3)(b) TCA 1997 provides that amounts paid out of the estate of a deceased person in respect of health expenses as defined in section 469 TCA 1997 may be allowed against the tax liability of the deceased individual.

(2)(a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—

- (i) the amount equal to the appropriate percentage of the specified amount, and
- (ii) the amount which reduces that income tax to nil,

but, where an individual proves that he or she defrayed health expenses incurred for the provision of health care in the nature of maintenance or treatment in a nursing home, other than a nursing home which does not provide access to 24 hour nursing care on-site, the individual shall be entitled for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction made from his or her total income of the amount proved to have been so defrayed.

(b) For the purposes of this section any contribution made by an individual in defraying expenses incurred in respect of nursing home fees where such an individual is entitled to or has received State support (within the meaning of section 3(1) of the Nursing Homes Support Scheme Act 2009) shall be treated as health expenses qualifying for relief under this section.

(c) Financial support (within the meaning of the Nursing Homes Support Scheme Act 2009) shall not be treated as health expenses for the purposes of this section.

1.2 Section 469 (b)(c) of the Taxes Consolidation Act 1997 states

b) any expenses defrayed out of the estate of a deceased person by his or her executor or administrator shall be deemed to have been defrayed by the deceased person immediately before his or her death, and

(c) expenses shall be regarded as not having been defrayed in so far as any sum in respect of, or by reference to, the health care to which they relate has been, or is to be, received, directly or indirectly, by the individual or the individual's estate, or by any dependant of the individual or such dependant's estate, from any public or local authority or under any contract of insurance or by means of compensation or otherwise.

1.3 Section 458 (1) & (1A) of the Taxes Consolidation Act 1997 states

(1) An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and, subject to subsection (1B), makes a return in the prescribed form of the individual's total income shall be entitled—

(a) for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax (in the Income Tax Acts referred to as "the taxable income") to have such deductions as are specified in the provisions referred to in Part 1 of the Table to this section, but subject to those provisions, made from the individual's total income, and

(b) to have the income tax to be charged on the individual reduced by such tax credits and other reductions as are specified in the provisions referred to in Part 2 of that Table, but subject to subsection (1A) and those provisions.

(1A) Where an individual is entitled to a tax credit specified in a provision referred to in Part 2 of the Table to this section, the income tax to be charged on the individual for the year of assessment, other than in accordance with section 16(2), shall be reduced by the lesser of—

(a) the amount of the tax credit, or

(b) the amount which reduces that income tax to nil.

2. Outline of relevant facts

2.1 T/P is the executor of [REDACTED] estate. [REDACTED] was in a nursing home from the [REDACTED]. [REDACTED] died on the [REDACTED]. [REDACTED] availed of the Fair Deal Scheme and got a loan for this from the HSE. Revenue manage and collect these loans on behalf of the HSE.

2.2 [REDACTED] paid back the Fair Deal Scheme loan in [REDACTED] from his [REDACTED]' estate to the amount of €[REDACTED]. This sum included an interest figure of [REDACTED] as the Fair Deal loan was not repaid within one year of the death of [REDACTED]

2.3 [REDACTED] contacted Revenue in [REDACTED] 2023 querying whether [REDACTED] was entitled to claim tax back on his [REDACTED] pension and the nursing home repayment amount of €[REDACTED]

2.4 [REDACTED] deceased did not have any private pension and received the Dept Social Protection State Pension only. [REDACTED] did not receive any other income.

2.5 It was explained to ██████ on numerous occasions that nothing could be refunded in this case as ██████ did not pay tax in the year of bereavement or in any years that ██████ was in the nursing home.”

Material Facts

12. Having considered and assessed the documentation submitted by the parties in this appeal, the Appeal Commissioner (“the Commissioner”) makes the following findings of material fact:

12.1. The Appellant is the Executor of ██████ late ██████ estate. The Appellant’s late ██████ died on ██████. The Appellant’s late ██████ was a resident in a ██████ prior to ██████ death and had availed of the Nursing Home Loan Scheme regarding ██████ stay at the nursing home.

12.2. On ██████ 2023 the Appellant lodged an enquiry with the Respondent about ██████ entitlement to receive a refund of health expenses incurred by ██████ late ██████ in ██████ and incurred and discharged by ██████ estate in ██████.

12.3. On ██████ 2023 the Respondent advised the Appellant that the Appellant’s claim was refused as it was made after the expiry of four years from the end of 2018.

12.4. On ██████ 2023 the Respondent advised the Appellant that a refund of nursing home fees was refused as a refund can only be claimed against tax that an individual has paid in that relevant year and that the Appellant’s late ██████ had not paid any tax in 2018.

Analysis

13. 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”.

14. 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..."

15. The Commission is a statutory entity and must 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."

16. The Commissioner refers to the provisions of section 469(2) (a) of the TCA 1997 which provides:

(2) (a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—

(i) the amount equal to the appropriate percentage of the specified amount, and

(ii) the amount which reduces that income tax to nil...

17. The Commissioner refers to the provisions of section 469(7) of the TCA 1997 which provides:

(7) Where relief is given under this section to any individual in respect of an amount used to defray health expenses, relief shall not be given under any other provision of the Income Tax Acts to that individual in respect of that amount.

18. The Commissioner refers to the Respondent's *Tax and Duty Manual Part 15-01-12 The Nursing Home Support Scheme: 4.1.2 Claiming tax relief following the end of the year of assessment:*

This is subject to the Tax and Duty Manual Part 15-01-12 requirement that the total amount of income tax paid by the individual in the relevant year of assessment exceeds the amount of relief due.

4.5 Death Cases

Section 469(3)(b) TCA 1997 provides that amounts paid out of the estate of a deceased person in respect of health expenses, as defined in section 469 TCA 1997, may be allowed against the tax liability of the deceased individual. Any payment defrayed out of the estate of a deceased person by his or her executor or administrator is deemed to have been defrayed by the deceased person immediately before his or her death. Such payments may be claimed under the heading of health expenses against the tax liability of the deceased person by the executor of his or her estate.

The Nursing Home Support Scheme (The "Fair Deal"): Tax Relief Available

Section 469(3)(b) TCA 1997 provides that amounts paid out of the estate of a deceased person in respect of health expenses as defined in section 469 TCA 1997 may be allowed against the tax liability of the deceased individual. Therefore, any deferred payment under the "nursing home loan" defrayed out of the estate of a deceased person by his or her executor or administrator is deemed to have been defrayed by the deceased person immediately before his or her death and may be claimed under the heading of health expenses against the tax liability of the deceased person by the executor of his or her estate.

19. The Commissioner has assessed the above provisions and finds that section 469(2)(a) of the TCA 1997 provides that where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual for that year of assessment shall be reduced. The Commissioner notes from the legislation that it is a requirement

that the person in respect of whom the claim for a refund of health expenses is made must have had an income tax liability. The Commissioner further notes that further to the provisions of section 469(7) of the TCA 1997 there is no other provision under which health expenses can be refunded.

20. The Commissioner refers to the Respondent's "Tax and Duty Manual Part 15-01-12 The Nursing Home Support Scheme"; *Nursing Home Support Scheme (The "Fair Deal"): Tax Relief Available*: which states;

Section 469(3)(b) TCA 1997 provides that amounts paid out of the estate of a deceased person in respect of health expenses as defined in section 469 TCA 1997 may be allowed against the tax liability of the deceased individual. Therefore, any deferred payment under the "nursing home loan" defrayed out of the estate of a deceased person by his or her executor or administrator is deemed to have been defrayed by the deceased person immediately before his or her death and may be claimed under the heading of health expenses against the tax liability of the deceased person by the executor of his or her estate.

21. The Commissioner refers to the above extract and notes that in order for a claim to be successfully made it must be "...claimed under the heading of health expenses against the tax liability of the deceased person by the executor of his or her estate". The Respondent's *Tax and Duty Manual Part 15-01-12 The Nursing Home Support Scheme* reiterates the requirement of section 469(2)(a) of the TCA 1997 that any claim for a refund must be made against a tax liability for the same taxable period.
22. The Commissioner has no statutory right or discretion to direct that the Respondent make a refund to the estate of the Appellant's late [REDACTED] as the Appellant's late [REDACTED] had not paid income tax in 2018.

Determination

23. The Commissioner has assessed all matters in this appeal and finds that the Respondent complied with the statutory provisions in its decision not to agree to make a refund to the Appellant in respect of health expenses incurred by [REDACTED] late [REDACTED] in 2018 and later by the estate of [REDACTED] late [REDACTED] in 2019. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful.
24. The Commissioner extends condolences to the Appellant on the death of [REDACTED]. The Commissioner further acknowledges that the Appellant was correct to appeal the Respondent's decision to refuse the claim for a refund of health expenses to obtain clarity of [REDACTED] and [REDACTED] late [REDACTED] estate's legal rights. The Commissioner understands that the

Appellant may be disappointed with the outcome of this appeal but is bound by the statutory provisions in making this determination.

25. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 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

26. 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

27. 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
18 September 2024