



92TACD2024

Between

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against an amended assessment to income tax for the year 2021 in the total amount of €4,907.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), this appeal is determined without a hearing.

Background

3. In 2021, the Appellant was employed as a teacher. She was jointly assessed to tax with her husband, and on 27 July 2022 she filed a Form 11 income tax return for the year. A notice of assessment issued on foot of her return which showed a tax liability of €1,127.60.
4. The Respondent did not agree with the Appellant’s calculations, and issued an amended notice of assessment on 30 August 2022. The amended assessment stated that the Appellant owed tax in the amount of €4,907, and had paid preliminary tax of €600, leaving an outstanding liability of €4,307.

5. On 6 January 2023, the Appellant appealed the amended assessment to the Commission. While the appeal was made late, as it was more than 30 days after the notice of amended assessment issued, there was no objection received from the Respondent, and the Commission accepted the appeal.
6. In correspondence with the Commission, the parties confirmed that they had no objection to the appeal being determined without a hearing, pursuant to section 949U of the TCA 1997. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation

7. Section 1080(2) of the TCA 1997 states *inter alia* that

“(a) Subject to this section and section 1081...

(ii) as respects tax due and payable for a chargeable period beginning on or after 1 January 2005, any tax due and payable by a chargeable person for a chargeable period shall carry interest from the date when the tax becomes due and payable until payment...

(b) Subject to this section and section 1081

(i) any tax charged by any assessment to income tax...

shall, notwithstanding any appeal against such assessment or statement, carry interest from the date when, if there were no appeal against the assessment or statement, the tax would become due and payable under section 960 until payment...”

Submissions

Appellant

8. In written submissions, the Appellant stated *inter alia* that

“As way of background I will give some brief details on my employment:

- I am a teacher - up until May 2021 I was partly paid by the Department of Education (DES) and privately paid by the school I worked in...As such some of my rate band/credits were allocated to the DES and the majority with [the school]. (Tax Credit Certificate Dated 3/12/2020)

- Approaching May 2021 I was informed by my school that they would be paying me fully through DES for May, but I would return to the previous arrangement for June, July and August (Amended TCC on 27/04 & 18/6/2021)
- In September, as was planned, my contract changed and I was fully paid by DES – phone call to Revenue followed by Amended TCC on 8/09/21.

As my Husband and I are jointly assessed and [REDACTED] we are obliged to file a Form 11 each year.

At each time when my employment 'changed' in 2021 I contacted Revenue, explaining what was a somewhat complex situation, fully detailing that my reason for contacting Revenue was to absolutely ensure I did not end up underpaying my PAYE IT for 2021. These calls were made via the Switchboard and could be listened to now I'm sure. At each time after I explained my circumstances the Revenue official made whatever adjustments they felt necessary to ensure an underpayment did not occur.

In July 2022 I filed my Form 11 and to my horror a large bill resulted. At this stage I did the following:

- Contacted Revenue and explained the situation.
 - I was advised to file my Form 11 with an expression of doubt and it would be reviewed - filed 27/07/21
 - I explained my great worry about this situation to the official and she said that nothing could be done until it was reviewed.
- A notice of assessment then issued on 30/08/22 in the amount of € 4,903.

Following this I made numerous efforts to contact the District that deals with my IT.

- I sent an enquiry through my enquiries (sent 21st September 2022) - no response until 17/11/22
- I sent an actual letter to the District Manager - no response
 - I had firstly rang the District and explained my issues and was transferred all around the houses, eventually to Debt Management who can do nothing about the actual liability amount, despite explaining I wanted to query/discuss the amount outstanding. All they could do was tell me to set up a PPA, but as they conceded themselves that doesn't address the issue of the liability.

[...]

While I am willing to accept there may have been an underpayment of IT by me in 2021 I think it would be more fitting to have a discussion about this with someone in the District, as despite doing everything possible to avoid this, it happened and to quite a significant amount which will cause me considerable difficulty in paying back.

Further to this, due to the protracted nature of this matter, despite me filing my Form 11 quite early, there is now interest being applied to the PPA on ROS and this is fundamentally unfair. I was more than willing to sort this out much earlier and it was the lack of response from Revenue that has caused the delay in sorting it out.

It is my firm belief that my wishes to ensure only unused credits/bands were transferred between employments were not carried out correctly. I believe there is culpability on both sides here and a fair deal/settlement should be reached.”

Respondent

9. In its written submissions, the Respondent stated *inter alia* that

“In total, four separate Tax Credit Certificates (TCC) issued in respect of the Appellant in the 2021 tax year. Her original TCC was the only time the Appellant had a source of income from both employers and there were three changes where her rate band and tax credits transferred to one or the other employers. These amendments were always made at the Appellant’s request.

In 2021 the Appellant had a Standard Rate Cut of Band of €35,709 and Tax Credits of €5,087.60 and these were split between her two employers at the start of the year. The table below details the changes made to the Appellant’s rate band and tax credits in 2021 (DOE – Department of Education and █████ – [the school])

| Date | | Rate Band | | Tax Credits | |
|----------|----------|-----------|-----------|-------------|-----------|
| From | To | DOE (€) | █████ (€) | DOE (€) | █████ (€) |
| 01/01/21 | 26/04/21 | 20,391 | 15,318 | 2,033.60 | 3,054 |
| 27/04/21 | 18/06/21 | 35,709 | 0 | 5,087.60 | 0 |
| 19/06/21 | 08/09/21 | 0 | 35,709 | 0 | 5,087.60 |
| 09/09/21 | 31/12/21 | 35,709 | 0 | 5,087.60 | 0 |

As can be seen in the table above, the Appellant had split her rate band and tax credits between her two employments, and this was amended by the Appellant when she

ceased her [school] employment through myAccount in April 2021. This resulted in all her rate band and tax credits transferring to her Department of Education employment.

The next amendment arose when the Appellant contacted the Respondent both through email and phone on the 18 June 2021 requesting that her rate band and tax credits be transferred to her [school] employment. This was completed by the Respondent the same day and an amended Tax Credit Certificate issued to the Appellant. However, this amendment caused an underpayment of tax being made.

The Appellant was paid fortnightly by the Department of Education and as they had completed their payroll for June by the time of the transfer, she received benefit of her rate band and tax credits in their payroll for June. [The school] on the other hand has a monthly payroll which resulted in the Appellant receiving benefit of her rate band and tax credits for June from them too. This resulted in the Appellant receiving double her rate band and tax credits in June which caused a tax underpayment of approximately €1,443.

In September 2021, the Appellant contacted the Respondent by phone to transfer all her rate band and tax credits from her [school] employment to her Department of Education employment. This amendment resulted in the Appellant receiving a tax refund of approximately €2,716 in September 2021 and a further refund of €445 in November 2021.

It was these refunds / underpayments, together with the tax due in relation to her non-PAYE income (rental income) that resulted in the Appellant's tax liability being assessed.

The Appellant has also expressed concern in her Notice of Appeal and Statement of Case to interest / penalties being imposed on the repayment of her underpayment.

The Respondent considers that interest and penalties could arise in respect of the Appellant's 2021 Income Tax underpayment.

To avoid interest charges, the amount of preliminary tax paid for a tax year must be equal to or exceed the lower of:

- 90% of your final liability for the (current) tax year, or
- 100% of your final liability for the previous tax year ('tax return' year), or

- 105% of your final liability for the pre-preceding tax year. (This option is only available where preliminary tax is paid by direct debit and does not apply where the tax payable for the pre-preceding year was nil).

The Appellant did not meet her Preliminary Tax requirement in 2021 as she had only paid €600 Preliminary Tax in respect of the 2021 tax year... If the amount of Preliminary Tax paid is too low; it may be liable to an interest charge. The due date for the payment of the full tax liability or the balance of tax due is backdated to the date the preliminary tax was due, i.e., 31 October in the actual year of assessment. In accordance with section 1080 of the Taxes Consolidation Act, interest is due on late payments of tax for each day, or part of a day, at the appropriate rate.”

Material Facts

10. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:
11. The Appellant is a teacher and is jointly assessed to income tax with her husband.
12. In 2021, the Appellant was partly paid by the Department of Education and partly paid by the school in which she worked. Due to changes in how she was paid during the year, four separate tax clearance certificates issued to the Appellant for 2021.
13. On 27 July 2022 the Appellant filed a Form 11 income tax return for the year. A notice of assessment issued on foot of her return which showed a tax liability of €1,127.60.
14. On 30 August 2022, the Respondent issued a notice of amended assessment to the Appellant. The amended assessment stated that the Appellant owed tax in the amount of €4,907, and had paid preliminary tax of €600, leaving an outstanding liability of €4,307.
15. The Appellant appealed the amended assessment to the Commission. However, she has not demonstrated that the amended assessment was incorrect.

Analysis

16. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to raise the amended assessment to income tax. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

17. The Commissioner has considerable sympathy for the Appellant in this instance. He does not doubt that she genuinely attempted to ensure that her tax credits were properly apportioned during 2021. However, due to the rather complex circumstances regarding her income from her employment, and how it was split between her school and the Department of Education, it seems that some of the amendments resulted in an underpayment of tax.
18. However, in order for her appeal to be successful, it is necessary for the Appellant to demonstrate that the Respondent was incorrect in raising the amended assessment to income tax. The Commissioner is satisfied that she has not done so; indeed, it appears to him that she has not challenged the substance of the amended assessment at all, and admitted in her submissions that *“I am willing to accept there may have been an underpayment of IT by me in 2021.”*
19. It seems to the Commissioner that the Appellant is aggrieved at the level of customer service provided to her by the Respondent. It is clear from the materials provided by the parties that there has been a significant amount of correspondence between the parties regarding this issue, and the Commissioner appreciates the frustration felt by the Appellant in her 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 Murray J at paragraph 64 of the Court of Appeal’s judgment in *Lee v Revenue Commissioners* [2021] IECA 18.
20. The Appellant is also aggrieved at the imposition of interest on the liability outstanding from 2021. However, the Commissioner considers that the imposition of interest is mandatory on foot of section 1080 of the TCA 1997, and he does not have any jurisdiction or discretion to waive interest properly charged, or to direct the Respondent to waive it.
21. To reiterate, the Commissioner is very sympathetic towards the Appellant in this instance, but he is satisfied that she has not demonstrated that the amended assessment raised by the Respondent is incorrect. Therefore, the appeal cannot succeed. The Commissioner would respectfully suggest to the Appellant that she engage with the Respondent to try to agree a mutually acceptable plan for the repayment of the amounts owed.

Determination

22. 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 amended assessment to income tax for 2021 raised by the Respondent is incorrect, and therefore the amended assessment stands.

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

24. 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

25. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone
Appeal Commissioner
22nd May 2024