



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

23TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a decision by the Revenue Commissioners (“the Respondent”) that the Appellant was not entitled to relief for health expenses in the amount of €239.20 in circumstances where the Appellant had been granted an exemption from income tax under section 188(5) of the TCA 1997.
2. On 29 August 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. An individual aged 65 and over is exempt from income tax where his or her total income is less than the relevant exemption limit. If the individual’s total income exceeds the relevant exemption limit, marginal relief may still be available where the individual’s total income is less than twice the exemption limit. This appeal relates to the application of that exemption from income tax, which is governed by section 188 of the TCA 1997.
4. In its Statement of Case, the Respondent outlined a chronology of events, the material part of which is as follows. On 9 February 2024, the Appellant submitted an income tax return for 2023, which included a claim for tax relief on health expenses of €1,196.00. On 9 February 2024, a Statement of Liability issued to the Appellant, which showed an underpayment of income tax in the amount of €791.90. Following correspondence between the Appellant and the Respondent, an amended Statement of Liability issued to the Appellant on 5 April 2024, which showed no underpayment of income tax. On 7 April 2024, the Appellant contacted the Respondent to state that the way in which the Respondent was calculating his liability denied him a refund of health expenses in the amount of €239.20. On 10 May 2024, the Respondent wrote to the Appellant to inform him that as he was granted an exemption from income tax, he could not claim for health expenses.
5. On 22 May 2024, the Appellant submitted a Notice of Appeal to the Commission, which enclosed a screenshot of the Respondent’s correspondence to the Appellant dated 10 May 2024.

6. On 10 July 2024, in response to a direction to submit a Statement of Case, the Appellant stated that he had nothing to add. On 29 July 2024, the Appellant stated the following to the Commission: *“The only comment I have to make is, I availed of the exemption as was my entitlement. I paid tax at 40% for my income over the exemption amount. Revenue, because of my availing of something I am entitled to, have decided to treat me differently to all other PAYE taxpayers and not allow me to claim for medical expenses.”* On 23 August 2024, the Respondent submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

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

8. Section 3 of the TCA 1997 provides (among other things):

“chargeable tax”, in relation to an individual for a year of assessment, means the amount of income tax to which that individual is chargeable for that year of assessment under section 15 in respect of his or her total income for that year including, in the case of an individual assessed to tax in accordance with the provisions of section 1017 or 1031C, the total income, if any, of the individual's spouse or civil partner, as the case may be;

"general tax credit", in relation to an individual for a year of assessment, means any relief (other than a credit under section 59) applicable for that year of assessment, not by way of deduction from income, but by way of reduction of or deduction from the chargeable tax or by way of repayment thereof when paid, other than a personal tax credit, and such credit shall be determined by reference to the amount of the reduction, deduction or repayment as the case may be;

"income tax payable", in relation to an individual for a year of assessment, means the chargeable tax less the aggregate of the personal tax credits and general tax credits;”

9. Section 188 of the TCA 1997 provides:

“(1) In this section -

“income tax payable” has the same meaning (inserted by the Finance Act, 2001) as in section 3, but without regard to any reduction of tax under section 244;

“total income” has the same meaning as in section 3, but includes income arising outside the State which is not chargeable to tax.

(2) In this section, “the specified amount” means, subject to subsection (2A) -

(a) in a case where the individual would apart from this section be entitled to a tax credit specified in section 461(a) (inserted by the Finance Act, 2001), €36,000, and

(b) in any other case, €18,000.

(2A) (a) For the purposes of this section, where a claimant proves that he or she has living at any time during the year of assessment any qualifying child then, subject to subsection (2B), the specified amount (within the meaning of this section) shall be increased for that year of assessment by -

(i) €575 in respect of the first such child,

(ii) €575 in respect of the second such child, and

(iii) €830 in respect of each such child in excess of 2.

(b) Any question as to whether a child is a qualifying child for the purposes of this section shall be determined on the same basis as it would be for the purposes of section 462B, but without regard to subsections (1)(b), (1)(c), (3) and (5) of that section.

(2B) Where for any year of assessment 2 or more individuals are, or but for this subsection would be, entitled under subsection (2A) to an increase in the specified amount, (within the meaning of this section) in respect of the same child, the following provisions shall apply:

(a) only one such increase under subsection (2A) shall be allowed in respect of each child;

(b) where such child is maintained by one individual only, that individual only shall be entitled to claim the increase;

(c) where such child is maintained by more than one individual, each individual shall be entitled to claim such part of the increase as is proportionate to the amount expended on the child by that individual in relation to the total amount paid by all individuals towards the maintenance of the child;

(d) in ascertaining for the purposes of this subsection whether an individual maintains a child and, if so, to what extent, any payment made by the individual for or towards the maintenance of the child which that individual is entitled to deduct in computing his or her total income for the purposes of the Income Tax

Acts shall be deemed not to be a payment for or towards the maintenance of the child.

(3) This section shall apply for any year of assessment to an individual who makes a claim for the purpose, makes a return in the prescribed form of his or her total income for that year and proves that, at some time during the year of assessment, either the individual, or, in a case where the individual would apart from this section be entitled to a tax credit specified in section 461(a), the spouse or civil partner of the individual, was of the age of 65 years or over.

(4) Where an individual to whom this section applies proves that his or her total income for a year of assessment for which this section applies does not exceed the specified amount, the individual shall be entitled to exemption from income tax for that year.

(5) Where an individual to whom this section applies proves that his or her total income for a year of assessment for which this section applies does not exceed a sum equal to twice the specified amount, the individual shall be entitled to have the amount of income tax payable in respect of his or her total income for that year, if that amount would but for this subsection exceed a sum equal to 40 per cent of the amount by which his or her total income exceeds the specified amount, reduced to that sum.

(6) (a) Subsections (1) and (2) of section 459 and section 460 shall apply in relation to exemption from tax or any reduction of tax under this section as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to section 458.

(b) Subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28 shall, with any necessary modifications, apply in relation to exemption from tax or any reduction of tax under this section.”

Submissions

Appellant

10. In his Notice of Appeal, the Appellant submitted:

“Because of my age ■ years, I am allowed 37980 tax free on my occupational pension, before being liable to tax at 40% on the balance. I have had multiple periods of online contact and one long phone call, to confirm my tax liabilities were settled. Revenue insisted that my income was liable to be taxed at 20%, even though they issued a certificate, that I was entitled to what I have listed above. I eventually won that battle,

but not what started my contact. The claim for health expenses. In all my contact with Revenue, no one told me that I wasn't able to claim these expenses. The last contact on the 10th May from a [REDACTED] replied and listed a link to a circular, which stated this. That circular says that I am not entitled to claim these expenses. I think this is manifestly unfair to me as a taxpayer, that I can't claim these, because I get a tax benefit which I am entitled to."

Respondent

11. In its Statement of Case, the Respondent outlined a chronology of events and submitted the following (among other things):

"The Respondent notes that Section 3 TCA 1997 confirms that "income tax payable", in relation to an individual for a year of assessment, means the chargeable tax less the aggregate of the personal tax credits and general tax credits.

Section 188 TCA provides for the age exemption and associated marginal relief. The age exemption applies for any year of assessment where an individual is aged 65 years or over, is a married person or civil partner and is jointly assessed to tax. The age exemption will apply where either individual is aged 65 or over and where the couple's total income does not exceed €36,000.

The relevant income thresholds may be increased further if the individual has a qualifying child. The thresholds are increased by €575 in respect of both the first and second child, and €830 in respect of each subsequent child.

Section 188(5) provides that, where an individual's income exceeds the exemption limit by no more than twice that amount, they can apply to have marginal relief applied to their record. This means that their income tax payable is reduced to a sum equal to 40% of the amount that exceeds the exemption limit.

In the case of the Appellant, marginal relief was available as his combined income with his spouse exceeded the relevant exemption limit in 2023 but was less than twice that amount.

As outlined above, Section 3 TCA 1997 should be considered in all aspects of taxation as it legislates for tax payable after the consideration of tax credits. In all instances where marginal relief is applied, a taxpayer will not receive an additional benefit of tax credits as they are utilised when finalising marginal relief calculation. This is due to the requirement of section 188(5) that marginal relief reduces an individual's income tax payable.

The legislation governing the age exemption and marginal relief under Section 188 TCA 1997 is clear in conjunction with Section 3 TCA 197, that the Respondent has applied the correct tax treatment to the Appellant for 2023 to ensure they maximised their taxation position for this period.

The Appellant's taxable income in 2023 was €39,564.01 and as an exemption of €37,980 was applied during the year, the income in excess of €37,980 was liable at the higher rate of tax 40%. An amount of €633.70 income tax was deducted from the Appellant's payroll in 2023.

The Appellant submitted an income tax return on 9 February 2024 to claim tax relief on Health Expenses incurred of €1,196. As the Appellant's income in 2023 exceeded the exemption limit, the exemption was removed and a credit for marginal relief as well as a credit for health expenses of €239.20 was applied. A Statement of Liability issued on 9 February 2024 confirming relief on health expenses had been applied and the Appellants final position for 2024 was an underpayment of €791.90.

Following a review of this case, an amended Statement of Liability dated 5 April 2024 issued to confirm that marginal relief had been increased from €433.00 to €1,225.00 and that the Appellant's record was now balanced."

Material Facts

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
 - 12.1. The Appellant is over 65 and has three children.
 - 12.2. The Appellant's total income for 2023 was €39,564.01.
 - 12.3. On 9 February 2024, the Appellant filed an income tax return for 2023, which included a claim for tax relief in respect of health expenses of €1,196.00.
 - 12.4. On 9 February 2024, the Respondent issued a Statement of Liability to the Appellant, which showed an underpayment of income tax in the amount of €791.90.
 - 12.5. On 5 April 2024, the Respondent issued an amended Statement of Liability to the Appellant, which showed no underpayment of tax.
 - 12.6. On 7 April 2024, the Appellant stated to the Respondent that he was being denied a refund of health expenses and on 10 May 2024, the Respondent informed the

Appellant that he could not claim health expenses as he was granted an exemption from income tax.

12.7. On 22 May 2024, the Appellant submitted a Notice of Appeal.

Analysis

13. This appeal relates to the Respondent's decision that the Appellant was not entitled to relief for health expenses in the amount of €239.20 in circumstances where the Appellant had been granted an exemption from income tax under section 188(5) of the TCA 1997. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.
14. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to decide that the Appellant was not entitled to relief for health expenses in the amount of €239.20 in circumstances where the Appellant had been granted an exemption from income tax under section 188(5) of the TCA 1997. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [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".

Section 188 TCA 1997

15. Section 188(4) of the TCA 1997 provides that if the total income of a person to whom section 188 applies does not exceed the specified amount, the person shall be entitled to an exemption from income tax.
16. Section 188(5) of the TCA 1997 provides that if the person's total income does not exceed a sum equal to twice the specified amount, the person shall be entitled to have the amount of income tax payable in respect of his or her total income for that year reduced to 40% of the amount by which his or her total income exceeds the specified amount.
17. The Appellant is ■ with three children. In accordance with subsections 188(2) and (2A) of the TCA 1997, the "specified amount" which applied to the Appellant was €37,980. The Appellant's total income for 2023 was €39,564.01, which exceeded the specified amount of €37,980. Accordingly, the Appellant was not entitled to an exemption from income tax in accordance with the provisions of section 188(4) of the TCA 1997.

Section 188(5) TCA 1997

18. Nonetheless, as the Appellant's total income did not exceed twice the specified amount, the Appellant was entitled to a reduction from income tax in accordance with the provisions of section 188(5) of the TCA 1997.
19. The Respondent's Tax and Duty Manual states that: "*marginal relief will only be given where it is more beneficial to the claimant than his or her entitlement to tax credits.*" In its Statement of Case, the Respondent stated that in this case, the Appellant benefitted from the age exemption and associated marginal relief
20. The Commissioner notes that the reduction provided for in section 188(5) is made in respect of "*income tax payable*", which is defined in section 3 of the TCA 1997 as "*chargeable tax less the aggregate of the personal tax credits and general tax credits*". The Commissioner further notes that the phrase "*general tax credits*" is defined in section 3 of the TCA 1997 as "*any relief...not by way of deduction from income, but by way of reduction of or deduction from the chargeable tax or by way of repayment thereof when paid, other than a personal tax credit, and such credit shall be determined by reference to the amount of the reduction, deduction or repayment as the case may be*", while the phrase "*chargeable tax*" is defined in section 3 of the TCA 1997 as the "*amount of income tax to which that individual is chargeable for that year of assessment under section 15 in respect of his or her total income for that year*".
21. Relief for health expenses is made by way of a reduction of the income tax to be charged on the individual, under section 469 of the TCA 1997. The Commissioner is therefore satisfied that relief for health expenses falls under the definition of "*general tax credits*".
22. The Commissioner notes that for marginal relief to be applied under section 188(5) of the TCA 1997, it must be established whether the amount of "*income tax payable*" would exceed a sum equal to 40 per cent of the amount by which his or her total income exceeds the specified amount. In order to ascertain the "*income tax payable*", it is necessary to deduct the aggregate of any applicable personal and general tax credits. It is the amount of "*income tax payable*" which the person is then entitled to have reduced to 40 per cent of the difference between the total income and the specified amount.
23. In its Statement of Case, the Respondent provided two sets of calculations, which showed calculations of the Appellant's income tax with and without the application of marginal relief under section 188(5) of the TCA 1997. Those calculations showed that had marginal relief not been applied, the income tax payable by the Appellant would have been

€1,858.60. The calculation of income tax payable factored in deductions for tax credits, which included health expenses in the amount of €239.20.

24. The Commissioner notes that 40 per cent of the amount by which the Appellant's total income of €39,564.01 exceeded the specified amount of €37,980 is €633.60. As the amount of income tax payable (€1,858.60) did exceed €633.60, the Appellant was entitled to have his income tax payable reduced to €633.60, which is what happened in this case. The Commissioner observes that the income tax which would otherwise have been payable by the Appellant and which was reduced in accordance with the provisions of section 188(5) of the TCA 1997 factored in deductions for tax credits, including health expenses in the amount of €239.20.
25. Having regard to the above, the Commissioner is satisfied that the Respondent's decision that the Appellant was not entitled to relief for health expenses in the amount of €239.20 in circumstances where the Appellant's income tax payable had been reduced under section 188(5) of the TCA 1997 was correct and in accordance with the legislation.
26. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Appellant was entitled to check whether the Respondent's decision was correct. However, the Commissioner must apply the legislation in making a determination.

Determination

27. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to decide that the Appellant was not entitled to relief for health expenses in the amount of €239.20 in circumstances where the Appellant had been granted an exemption from income tax under section 188(5) of the TCA 1997.
28. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

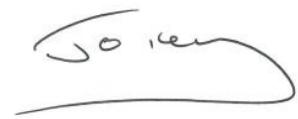
Notification

29. 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

30. 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.

A handwritten signature in black ink, appearing to read 'Jo Kenny', with a long horizontal flourish underneath.

Jo Kenny
Appeal Commissioner
18 November 2024