



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

50TACD2025



Appellant

and

The 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 on behalf of [REDACTED] (“the Appellant”) in relation to Amended Statements of Liability that issued to the Appellant by the Revenue Commissioners (“the Respondent”), for the years 2019 and 2020 and Statements of Liability that issued to the Appellant by the Respondent, for the years 2021 and 2022 (collectively “the Statements of Liability”) (collectively “the relevant years”). The Statements of Liability reflect an underpayment outstanding on the part of the Appellant for the relevant years, in the amount of €8,673.41.
2. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.
3. The Appellant submitted a Notice of Appeal and accompanying documentation in support of her appeal. In addition, the Appellant submitted a short email in lieu of a formal Statement of Case, which reiterated what was contained in the Appellant’s Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.

Background

4. On **11 June 2015**, the Appellant and her spouse were married and they were jointly assessed for the purposes of income tax.
5. On **15 January 2020**, the Appellant submitted an income tax return for the year 2019 and on **19 January 2021**, the Appellant submitted an income tax return for the year 2020, under joint assessment, which generated a repayment of income tax to the Appellant from the Respondent.
6. On **8 June 2022**, the Appellant contacted the Respondent to advise the Respondent of a change in her civil status and the Appellant attached a copy of a decree of divorce, [REDACTED]
[REDACTED]. The Appellant requested that their civil status be updated to reflect this change in circumstances.
7. On **10 June 2022**, the Respondent replied to the Appellant acknowledging receipt of the decree of divorce and confirmed that their record had been amended. In response to the Appellant, the Respondent submitted that it provided incorrect information to the

Appellant, namely that it stated that tax credits and rate band allocations of the Appellant and her ex-spouse would be readjusted to a single person's tax credit from 1 January 2023. This occurred, the Respondent stated, because at the time, the Appellant had not provided a date of separation.

8. The Respondent submitted that on **20 April 2023**, it received from the Appellant confirmation that the date of separation was [REDACTED], but that the Appellant and her ex-spouse had remained living together until their divorce was finalised on [REDACTED]
9. Following receipt of a confirmed date of separation, in addition to the [REDACTED] decree of divorce, the Respondent updated the record of the Appellant for the relevant years. As a result, Statements of Liability issued to the Appellant showing an underpayment of income tax for the relevant years, in the amount of €8,673.41.
10. The Respondent submitted that the underpayment is currently due for collection by way of a reduction of the Appellant's tax credits over a four year period, commencing from 2025 as follows: 2025 = €1,827.39, 2026 = €2,404.27, 2027 = €2,408.98 and 2028 = €2,032.77.
11. The Respondent submitted that it was willing to engage with the Appellant in relation to the collection of this underpayment, over an extended period of time, to alleviate any hardship that may arise for the Appellant in terms of the amounts.
12. On **29 August 2024**, the Appellant duly appealed to the Commission by submitting a Notice of Appeal.

Legislation and Guidelines

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

14. Section 1015 TCA 1997, Interpretation, states *inter alia* that:

.....

(2) *A wife shall be treated for income tax purposes as living with her husband unless either –*

(a) *they are separated under an order of a court of competent jurisdiction or by deed of separation, or*

(b) *they are in fact separated in such circumstances that the separation is likely to be permanent.*

15. Section 1016 TCA 1997, Assessment as single persons, states that:

- (1) *Subject to subsection (2), in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.*
- (2) *Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment.*

16. Section 1017 TCA 1997, Assessment of husband in respect of income of both spouses, states *inter alia* that:

- (1) *Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –*
 - (a) *the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,*

.....
- (2) *Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.*

17. Section 1018 TCA 1997, Election for assessment under section 1017, states that:

- (1) *A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.*

- (2) *Where an election is made under subsection (1) in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.*
- (3) *Notwithstanding subsections (1) and (2), either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment*
- (4) (a) *A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016.*
- (b) *Where a husband or his wife has duly given notice under paragraph (a), that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.*

Submissions

Appellant's submissions

18. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and the email correspondence from the Appellant, in response to a request for a Statement of Case:-

"I am appealing the decision because even though my husband was [REDACTED] [REDACTED] there was no formal separation under an order of a court or by deed of separation and [REDACTED] [REDACTED] I was the only one working so hard to pay for rent until I presented to him a divorce decree on [REDACTED] then that when he left the house.

.....I don't agree to the statement that we were separated [REDACTED] [REDACTED] and I paid all expenses for him and myself too.

I am writing to state that what I had previously stated in my email is exactly the truth of what happened and once again hereby write to confirm the fact that it was only after divorce that my ex husband left the [REDACTED]

and as I was the only one working and paying for the rent and all the bills, [REDACTED]

And as Revenue can verify from the revenue system , they will discover that my ex husband worked for a short while after our marriage then later deliberately refused to work as revenue can verify this in the system that he was not working.

Apart from not working, [REDACTED]

I am kindly requesting for your understanding and help to resolve this issue so that I get a waiver of the tax arrears that I am being asked to pay at the moment which is not fair since I paid for all his expenses including rent and bills [REDACTED]

I hope my request will be under your favourable consideration". [sic]

Respondent's submissions

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

".....

The Appellant and their spouse were married on 11 June 2015 and were taxed under joint assessment until the Appellant contacted the Respondent in June 2022 to advise of their divorce and request that their civil status be updated to reflect this.

The Appellant first notified the Respondent of a change in their civil status by attaching a copy of their divorce decree [REDACTED]. This update confirmed a date of divorce as [REDACTED].

The Respondent replied to the Appellant on 10 June 2022 acknowledging receipt of their divorce decree and confirmed their record had been amended. In this instance, when

replying to the Appellant, the Respondent provided incorrect information stating their tax credits and rate band allocations would be readjusted to single persons tax credits from 1 January 2023. However, at this time, the Appellant had not provided a date of separation. Therefore, the Appellants record should not have been amended until a date of separation was confirmed. The Respondent apologises to the Appellant for any confusion caused in this instance.

The Respondent received a confirmed separation date of [REDACTED] from the Appellant on 20 April 2023. The Appellant confirmed in this correspondence that they had separated from their ex-spouse on [REDACTED], but that they remained living together until their divorce was finalised on [REDACTED]

The Respondent can confirm based on the submissions received from the Appellant, their record is in order and the confirmed date of divorce and separation has been applied to their record.

Background to PAYE underpayments 2019-2022

The Appellant availed of the joint assessment basis of taxation for years 2019 – 2022. As a result, the Appellant was in receipt of additional tax credits and rate band allocations, that were not due. Information subsequently provided from the Appellant has confirmed a date of separation from her ex-spouse of [REDACTED]. Consequently, it has been established that the Appellant availed of additional tax credit and rate band allowances they were not entitled to for the periods 2019-2022.

The Respondent further notes that the Appellant submitted a PAYE Income Tax Return for 2019 on 15 January 2020 and a PAYE Income Tax Return for 2020 on 19 January 2021 under joint assessment which generated refunds.

Following receipt of a confirmed date of separation, in addition to a divorce decree, the Respondent correctly updated the record of the Appellant for the years 2019 – 2022. As a result, amended Statements of Liability issued to the Appellant for years 2019 and 2020. While Statements of Liability for years 2021 and 2022 issued to the Appellant outlining their final income tax position for these years.

Current Underpayment

The Appellant now correctly has an overall underpayment outstanding for years 2019-2022 of €8,673.41. The underpayment is currently due for collection by a reduction of their tax credits over a four-year period commencing from 2025 onwards as outlined below.

- 2025 = €1,827.39
- 2026 = €2,404.27
- 2027 = €2,408.98
- 2028 = €2,032.77

However, the Respondent is willing to engage with the Appellant on the collection of this underpayment over an extended time period to alleviate any hardship on them.

.....

4. Summary

The facts of the case clearly establish that the Appellant separated from their ex-spouse on [REDACTED]. The Appellant has confirmed this date in correspondence submitted to the Respondent on 20 April 2023.

The central issue in this appeal, is the Appellants eligibility to joint assessment for the period of her separation up until her divorce in [REDACTED].

Section 1018 of the Taxes Consolidation Act 1997 allows for a married couple to jointly elect to be jointly assessed where both spouses are living together. Section 1015(2) provides that a married couple will be treated as living together unless they are either separated under a court order or deed of separation, or they are in fact separated in such circumstances that the separation is likely to be permanent.

In that regard the wording of Section 1015(2)(b) TCA 1997 on whether the separation of the spouses is 'likely to be permanent' in a given tax year of assessment, is crucial to determining the eligibility of the Appellant to claim joint assessment.

Based on the evidence provided from the Appellant, it is clear that the separation was permanent from [REDACTED] onwards. Additionally, the confirmed date of divorce of [REDACTED] further reaffirms the permanency of the Appellants initial separation date.

In that regard, the Respondent must also reference the Family Law Act 2019 which clearly provides that couples must be separated for two years out of the last three in order to be granted a divorce.

In this case, it is clear from the facts presented that the Appellant permanently separated from her ex-spouse on [REDACTED]. Accordingly, their entitlement to joint assessment ceased from 2019 onwards.

The Respondent has acted at all times in accordance with the prescribed legislation in this case and is satisfied that the final taxation position for the Appellant for years 2019-2022 is correct in accordance with the legislation governing eligibility to joint assessment

.....”

Material Facts

20. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
 - 20.1. On 11 June 2015, the Appellant and her spouse were married and were thereafter, jointly assessed for the purposes of income tax.
 - 20.2. On or about [REDACTED] the Appellant permanently separated from her ex-spouse.
 - 20.3. On 15 January 2020, the Appellant submitted an income tax return for 2019 under joint assessment.
 - 20.4. On 19 January 2021, the Appellant submitted an income tax return for 2020, under joint assessment.
 - 20.5. Following the submission of the Appellant’s income tax returns for 2019 and 2020, a repayment of income tax was issued to the Appellant from the Respondent.
 - 20.6. On 8 June 2022, the Appellant contacted the Respondent to advise the Respondent of a change in her civil status and the Appellant attached a copy of a decree of divorce.
 - 20.7. The date of the decree of divorce of the Appellant and her ex-spouse was [REDACTED].
 - 20.8. On 20 April 2023, the Respondent received from the Appellant confirmation that the date of separation was [REDACTED], but that the Appellant and her ex-spouse had remained living together until their divorce was finalised on [REDACTED].
 - 20.9. Following receipt of a confirmed date of separation, in addition to the decree of divorce, the Respondent updated the record of the Appellant for the relevant years. As a result, Statements of Liability issued to the Appellant showing an underpayment for the relevant years, in the amount of €8,673.41.

20.10. The underpayment is currently due for collection by a reduction of the Appellant's tax credits over a four-year period commencing from 2025 onwards as follows: 2025 = €1,827.39, 2026 = €2,404.27, 2027 = €2,408.98 and 2028 = €2,032.77.

20.11. On 29 August 2024, the Appellant duly appealed to the Commission by submitted a Notice of Appeal

Analysis

21. 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:

"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".

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

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

23. Section 1016 TCA 1997 provides that the default position regarding taxation of married couples is that they are assessed separately. However, this is subject to section 1018 TCA 1997, which allows for a married couple to jointly elect to be jointly assessed to income tax "where the wife is living with the husband".

24. Section 1015(2) TCA 1997 provides that a married couple will be treated as living together unless *inter alia* "(b) they are in fact separated in such circumstances that the separation is likely to be permanent." In this appeal, the Appellant was jointly assessed to tax with her then spouse for the relevant years. However, whilst the Appellant was granted a decree of divorce on [REDACTED] the Appellant confirmed that the date of separation was in fact on or about [REDACTED]. As a consequence, the Respondent subsequently assessed the Appellant to additional income tax for the relevant years, on the basis that

the Appellant was living separately from her spouse and should not have been jointly assessed with him for the relevant years.

25. The Commissioner notes that the Appellant stated in her Notice of Appeal that she does not agree with that date because [REDACTED].” The Commissioner notes that on 15 January 2020 and on 19 January 2021, the Appellant submitted income tax returns for the tax years 2019 and 2020 under joint assessment, which generated a repayment of income tax to the Appellant. It was on this basis also, that the Respondent assessed the Appellant for the tax years 2021 and 2022. Thus, the consequence of this was that the Appellant was in receipt of additional tax credits and rate band allocations, which were not due as a result of her separation from her ex-spouse.
26. Section 1015(2) TCA 1997 provides that a wife shall be treated for income tax purposes as living with her husband unless *inter alia* “(b) they are in fact separated in such circumstances that the separation is likely to be permanent.” The Commissioner notes that the Appellant submitted that “[REDACTED] there was no formal separation under an order of a court or by deed of separation and [REDACTED] [REDACTED] and I was the only one working so hard to pay for rent until I presented to him a divorce decree on [REDACTED] [REDACTED]”. The Commissioner is satisfied that the requirements of the legislation are clear and self-evident such that, section 1015(2) TCA 1997 does not require an order of the court or deed of separation. Rather, the legislation requires that a married couple are “separated in such circumstances that the separation is likely to be permanent.” Based on the information submitted in this appeal, the Commissioner is satisfied that the Appellant and her ex-spouse were de facto separated and not living as a married couple from on or about [REDACTED] [REDACTED] and that the Appellant was “separated in such circumstances that the separation is likely to be permanent”, in accordance with section 1015(2) TCA 1997. The Appellant and her ex-spouse were granted a decree of divorce in [REDACTED]. The Commissioner is satisfied that this demonstrates that their separation from [REDACTED] was “likely to be permanent”.
27. Moreover, the Commissioner notes that in accordance with section 5 of the Family Law (Divorce Act) 1996, in order to be entitled to obtain a decree of divorce, spouses must have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years. The legislation was amended in 2019, to reduce that time period for living apart from one another for a period of, or periods amounting to, at

least two years during the previous three years. Moreover, the amendments included the insertion of subsection (1A) into section 5 of the act, which provides that “*spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship*”. The Commissioner has finds as a material fact that the Appellant was granted a decree of divorce on [REDACTED].

28. As stated the burden of proof in this appeal was on the Appellant to show that the Respondent was incorrect to issue the Statements of Liability. The Commissioner is satisfied that having regard to the facts of this appeal and the submissions made, the Appellant has not shown on balance that the Respondent’s decision, to conclude that the Appellant should have been separately assessed for the relevant years, was incorrect.
29. Consequently, pursuant to section 1015(2)(b) TCA 1997, the Commissioner is satisfied that the Respondent correctly determined the Appellant to be separated from her ex-spouse for the relevant years. In determining this appeal, the Commissioner has given the words in section 1015(2) TCA 1997 their ordinary and natural meaning.
30. In this instance, the Commissioner is satisfied that the Respondent had correctly concluded that the Appellant was not living with her ex-spouse, as a married couple from 2019 to 2022. As a result, the Commissioner considers that the Appellant should have been assessed separately from her ex-spouse for the relevant years.
31. The Commissioner has considerable sympathy for the Appellant and her circumstances outlined. However, the Commissioner’s jurisdiction is limited to interpreting and applying the law as enacted by the Oireachtas. The Commissioner does not have a discretion to disapply legislation because she has sympathy for the position in which a taxpayer finds herself.
32. In conclusion, the Commissioner must find that the Respondent was correct to raise the additional assessments to tax against the Appellant for the relevant years. The Commissioner notes that the Respondent stated that it would be happy to further engage with the Appellant in relation to the collection of the underpayment over an extended period of time to alleviate any hardship that may arise for the Appellant in terms of the amounts. The Commissioner would suggest to the Appellant that she discuss her position further with the Respondent in this regard.

Determination

33. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed. The Commissioner is satisfied that the Respondent was correct to raise Statements of Liability against the Appellant for the relevant years and those Statements of Liability shall stand.
34. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
35. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

36. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

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


Claire Millrine
Appeal Commissioner
30 January 2025