



**115TACD2020**

**BETWEEN/**

**REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a liability in relation to the tax treatment of taxable Social Welfare Benefits.
2. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.

**Background**

3. The Respondent on 13 March 2019 by way of a "PAYE/USC End of Year Statement (P21) For the tax year 2018" (treated as if it were an assessment to tax raised on the Appellants), assessed the Appellant to income tax on the entire income of himself and his spouse. This assessment resulted in an underpayment in the amount of €586.79.
4. The Appellant appealed the notice of assessment to the Tax Appeals Commission on 8 November 2019.

5. The underpayment arose principally because the Respondent failed to properly code the amount of the Appellant's State pension income (which commenced in March 2018) to his tax credits in respect of his and his wife's other PAYE employments.
6. The facts are not in dispute in this appeal.

### **Legislation**

7. Section 126 Taxes Consolidation Act 1997

*(1) In this section, "the Acts" means the Social Welfare Acts;*

*(2) (a) This subsection shall apply to the following benefits payable under the Acts—*

- (i) widow's (contributory) pension,*
- (ii) orphan's (contributory) allowance,*
- (iii) retirement pension, and*
- (iv) old age (contributory) pension.*

*(b) Payments of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.*

8. Section 997 Taxes Consolidation Act 1997

*(3) Where the inspector, in accordance with the provisions of [Regulation 28 of the Income tax (Employments) Regulations 2918 (S.I. No. 345 of 2018)] sends a statement of liability to an employee, that statement shall, if the inspector so directs and gives notice accordingly in or with the statement sent to the employee, be treated in all respects as if it were an assessment raised on the employee, and all the provisions of the Income Tax Acts relating to [...] and the collection and recovery of tax charged in an assessment shall accordingly apply to the statement.]*

### **Submissions**

9. The Appellant submitted that the underpayment arose because the Respondent provided him with incorrect tax credits for the year 2018 resulting in his principal employer failing to deduct the correct amount of income tax from his periodic income.



10. The Appellant submitted that he advised Revenue of the fact that he had commenced receipt of the old age pension from 18 March 2018. He was aware of his obligation to pay tax on this income and was concerned that he would have an underpayment of tax on this income source if his tax credits remained the same.
11. The Appellant submitted that on calling to his local Revenue office about the matter that he was advised by a Revenue official that he would send an updated tax credit certificate to his employer to adjust the tax being collected. The Revenue Official addressed his concerns about the likelihood of an underpayment arising by telling him that he would pay the liability periodically through his pay. The official told him not to worry about the matter further.
12. The Appellant submitted that he accepted the assurances of the Revenue official and left the offices.
13. The Appellant submitted that he was surprised on receipt of an end of year balancing statement for 2018 to discover that after availing of medical expenses relief he had incurred a net underpayment of €586.97 due to the incorrect coding of his old age pension income to his tax credits.
14. The Appellant further advised in his submissions that he discussed the matter of his underpayment and the circumstances in which it arose with a senior Revenue official on 28 March 2019. This Revenue official explained that following his visit to the tax office in 2018 he had been placed on a week one basis rather than a cumulative basis from 12 April 2018.
15. The Respondent submitted that the contributory old age pension payable by the Department of Employment Affairs and Social Protection is subject to income tax in the hands of the the Appellant and he is liable to pay tax on the full amount of this State Contributory Pension.
16. The Respondent submitted that the Week 1 basis is generally applied in cases where credits and rate band have been reduced. A reduction in tax credits and rate band would result in a tax liability for the previous pay periods and if the taxpayer is put on a Cumulative tax basis the entire liability would be collected in one pay period. This can potentially cause hardship by significantly reducing or even negating the taxpayers pay in





the period it applies. Unless specifically requested, a Cumulative Tax Credit Certificate would not be issued.

17. The Respondent submitted that in March 2018 the State Pension income was added to the Appellants record and as a result his credits and rate band was reduced in order to collect tax. The Appellant paid tax on his State Pension from April onwards however due to the Week 1 basis the underpayment of tax for, approximately, the previous 14 weeks was not collected.
18. The Respondent further submitted that unless specifically requested, a Cumulative Tax Credit Certificate would not be issued. As such, the assessed underpayment on record is valid and the Appellant is liable for payment of same.

### **Analysis and findings**

19. There is no dispute in the validity of the underpayment created by the assessment in this case. It is certain in accordance with Section 126 Taxes Consolidation Act 1997 that the contributory pension is an emolument subject to income tax.
20. It is acknowledged that all of the Appellant's income and tax credits for 2018 have been correctly encapsulated in the assessment the subject matter of this appeal.
21. The Appellant seeks to highlight the inaccuracies or inefficiencies of the mechanisms employed by the Respondent in attempting to collect all the tax as it falls due and was surprised to discover the underpayment that arose due to the failure to collect the tax under the PAYE system in regular instalments.
22. The Respondent on the other hand in attempting to avoid a single emolument with a significant tax take used a week one basis to collect the tax rather than a cumulative basis.
23. The Respondent has correctly made an assessment in the form of a "PAYE/USC End of Year Statement (P21) For the tax year 2018" that includes all of the Appellants income, deductions and tax credits in arriving at the Appellant's income and tax liability for 2018.
24. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal



Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.

25. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessment to tax, raised by the Respondent is incorrect. There is no remedy available to the Tax Appeals Commission to assist the Appellant in his assertions in relation to the failure of the Appellant to order his tax credits in such a way as to avoid the underpayment that arose for 2018.

26. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.’*

27. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Respondent’s view of the matter is incorrect. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that the assessment for 2018 is incorrect.

### **Determination**





28. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the Appellants' tax liability for 2018 is as assessed by Revenue.

29. The appeal is hereby determined in accordance with Section 949 AK TCA 1997.

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**15 April 2020**

