



21TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against an assessment for the tax year 2012 issued by the Respondent after receipt of a self-assessment return made by the Appellant in 2016 in respect of the 2012 tax year.
2. The 2012 assessment includes a negative balance for PAYE paid in the amount of €828. This gives rise to a final balance payable per the assessment for 2012 of €848.
3. The Appellant disputes this amount as he understood that PAYE is deducted at source from all his income and he was not aware of any underpayment. He also disputes the Respondent's entitlement to raise an assessment in 2016 in respect of outstanding taxes from a previous year.
4. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of S.949U TCA 1997.

Background

5. The Appellant submitted an income tax return in respect of the 2012 tax year on 2 June 2016. The Appellant had self-employment income up to August 2012. As a result, he was a chargeable person in 2012 and was required to submit a self-assessed tax return. In 2012 the Appellant was jointly assessed with his spouse and his return included other Schedule E income that he and his spouse had earned in that year.
6. The negative balance for PAYE paid of €828 arose due to an adjustment made by the Respondent at the time the assessment was issued in 2016. The Respondent advised the Appellant that this adjustment was the collection of an underpayment of income tax from 2010. On 21 July 2011 the Respondent had issued a PAYE balancing statement (P21) for 2010 which showed an underpayment of €1,734. This underpayment arose due to the fact that no PAYE tax was deducted at source from the Appellant's employment income in 2010 and the Appellant was also in receipt of taxable illness benefit and jobseekers benefit in 2010.
7. Refunds of VAT due to the Appellant in respect of his trading activities in 2012 in the amount of €717 were offset against the underpayment of €1,734 in 2010. The balance of the tax due was to be collected by a reduction of tax credits by €867 in 2012 and €150 in 2013. This method of collecting outstanding tax due applies to individuals where P21 balancing statements apply and the tax can be collected by reduction of tax credits in future years.
8. The Appellant had low levels of income in 2012 and subsequent years and by 2016 the reduction of his tax credits had not resulted in the collection of the full amount of remaining tax underpayment that originally arose in 2010. In 2016, the remaining balance of this tax due was €828.
9. On the 27 July 2016 the Respondent issued the notice of assessment for 2012 in accordance with the income submitted by the Appellant. As the reduction of the Appellant's tax credits in years up to then had not given rise to the collection of the outstanding tax remaining from 2010, the Respondent adjusted the PAYE paid in this 2012 assessment by the negative amount of €828. This adjustment gave rise to the final balance payable of €848 due, as per the 2012 assessment. This assessment in 2012 is the subject of this appeal.



Legislation

Section 986 (1)(d) TCA 1997

(1) The Revenue Commissioners shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Chapter applies or of income tax for any previous year of assessment remaining unpaid, and those regulations may, in particular and without prejudice to the generality of the foregoing, include provision –

.....

(d) for the collection and recovery, whether by deduction from emoluments paid in any year or otherwise, of tax in respect of emoluments to which this Chapter applies which has not been deducted or otherwise recovered during the year;

Regulation 10(1)(f) – Income Tax (Employments)(Consolidated) Regulations 2001

10. Determination of appropriate tax credits and standard rate cut-off point by inspector

(1) The amount of the tax credits and standard rate cut-off point appropriate to an employee for any year shall be determined by the inspector who for that purpose may have regard to any of the following matters, namely-

.....

(f) any tax remaining unpaid for any previous year which is not otherwise recovered;

Regulation 2 – Income Tax (Employments)(Consolidated) Regulations 2001

2. Interpretation

“tax credits” in relation to an employee means the appropriate amount of personal tax credits and general tax credits to which the employee is entitled under the Act;

“general tax credit” has the same meaning as in section 3 of the Act;

Section 3 TCA 1997

“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;

“personal tax credit”, in relation to an individual for a year of assessment, means a tax credit specified in *sections 461, 461A, 462B, 463, 464, 465, 466, 466A, 468 and 472*;

Submissions Analysis

10. On 2 June 2016 the Appellant submitted his self-assessment tax return in respect of the tax year 2012. The Appellant was a chargeable person in 2012 as he had trading income. He also submitted VAT returns in respect of his trade.
11. The Appellant does not dispute that he was a chargeable person in 2012 and he submitted the required income tax return and VAT returns.
12. The Appellant accepts that €828 of the balance payable of €848 shown in the 2012 assessment under appeal, relates to outstanding taxes from 2010. Although he asserted that, as far as he understood, his employer should have deducted PAYE from his employment income in 2010 he did not dispute any of the amounts shown in the 2010 P21 assessment and did not identify any income or credit amounts that he disagreed with.
13. The Appellant highlighted in his submissions that he was diagnosed with REDACTED in 2018. As a result, he is unable to work, is in receipt of illness benefit and has no money to pay the tax due.
14. The Respondent set out the basis on which the negative PAYE adjustment was made to the 2012 assessment. The Respondent stated that the adjustment of €828 is the balance of tax outstanding from the underpayment in 2010.
15. The Respondent stated that the relevant legislation that permits them to make the negative PAYE adjustment is contained in S.986 (d) TCA97 and Regulation 10(1)(f) of the Income Tax (Employments) (Consolidated) Regulations 2001. The Respondent also stated that “as the Appellant did not submit his 2012 Income Tax return until 2nd



June 2016, Revenue were not in a position to issue an Income Tax assessment prior to then.”

Findings

16. Section 986(1)(d) provides that the Revenue Commissioners shall make regulations with respect to the collection and recovery of Income tax. The Respondent submitted that the provision that allows them to adjust the 2012 assessment and include a negative PAYE balance in respect of the outstanding tax from 2010 is Regulation 10(1)(f) – Income Tax (Employment)(Consolidated) Regulations 2001 (‘the Regulations’).

17. Section 10(1)(f) of the Regulations allows the Revenue Commissioners to have regard to any tax remaining unpaid from previous years when determining the appropriate tax credits and standard rate cut off point. In effect this permits Revenue, in the case of taxpayers issued with P21 balancing statements, to reduce a taxpayer’s tax credits and thereby increase the amount of future tax payable at source by that taxpayer under the PAYE system. The adjustment of the credits is a tax collection mechanism afforded to Revenue for taxpayers not otherwise subject to the self-assessment tax collection procedures.

18. Tax credits are defined in Section 2 of the Regulations as including;

“the appropriate amount of personal tax credits and general tax credits to which the employee is entitled under the Act.”

19. General Tax credits and Personal tax credits are defined in Section 3 TCA 1997 as;

“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;

“personal tax credit”, in relation to an individual for a year of assessment, means a tax credit specified in sections 461, 461A, 462B, 463, 464, 465, 466, 466A, 468 and 472



20. The income tax assessment in dispute clearly indicates that the Appellant's personal tax credits were restricted to the 'Total income tax' amount. Personal and general tax credits are only allowed up to the amount of income tax due in a year. On the basis that the Appellant was jointly assessed and therefore entitled to double personal allowances of €1650 and also would have been entitled to the PAYE tax credit in that year, the Appellant would have had an amount of unutilised personal credits in 2012.
21. The 2012 assessment includes a negative amount for "PAYE paid". Normally, a PAYE paid credit represents income tax which the taxpayer has already paid. Such credits, according to Maguire in *Irish Income Tax 2019*(at 3.110, page 403) are known as 'full credits'. Full credits are refundable where they exceed the net tax due. The negative "PAYE paid" credit in 2012 is in effect a negative "full credit" and is an additional tax liability imposed in that year.
22. I am satisfied that there is no inherent ambiguity in the statutory wording of S.10 and S.2 of the Regulations and Section 3 TCA 1997. Thus, the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the taxation of statutes, based on a long line of authority including *inter alia*; *Revenue Commissioners v Doorley* (1933) IR750, *Inspector of Taxes v Kiernan* (1982) ILRM 13, *Cape Brandy v Inland Revenue Commissioners* (1921) 1 KB 64, *Texaco (Ireland) Ltd v Murphy* (1991)2 IR 449.
23. I am satisfied that the powers granted to the Respondent, to determine tax credits under Section 10 and Section 2 of the Regulations, is limited to personal and general tax credits only and does not include negative adjustments to the 'full credits' which, typically, represent income tax which the taxpayer has already paid.
24. The inclusion of the negative PAYE amount of €828 is in effect a reassessment of the same amount due from 2010. The purpose of Section 10 (1)(f) is to improve the tax collection mechanism for PAYE taxpayers. The inclusion of the negative PAYE amount of €828 did not result in the collection of any of the outstanding taxes from 2010 but merely restated the outstanding liability from 2010 to 2012.
25. The 2010 assessment is not the subject of this appeal and the outstanding tax due from 2010 of €828 remains due.

Conclusion





26. Based on a consideration of the evidence and submissions together with a review of the documentation furnished, I determine that the 2012 assessment should be amended and that the negative "PAYE paid" in the amount of (€828) should be deleted from the assessment. This gives rise to a final balance payable per the assessment for 2012 of €20.

27. This determination does not alter the residual underpayment of €828 relating to 2010.

28. The appeal hereby is determined in accordance with section 949AK TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

16 January 2020

