AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

63TACD2023

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against a Statement of Liability issued by the Revenue Commissioners ("the Respondent") showing a underpayment of income tax in the amount of €224.28 for the tax year 2021.

2. The appeal proceeded by way of a hearing on 7 March 2023.

Background

3. The Appellant and her husband were taxed under joint assessment, with the Appellant being the assessable spouse. On 3 December 2020, the Respondent issued the Appellant's tax credit certificate ("TCC") for 2021.

4. On [redacted] 2021, the Appellant's husband died. On 29 June 2021, she notified her husband's death to the Respondent. On 29 June 2021 an amended TCC issued to her.

5. Further amended TCCs issued on 8 July 2021 and 19 July 2021. The latter TCC stated that income up to €59,758 was taxable at 20%.

6. On 14 February 2022, the Respondent issued a Statement of Liability to the Appellant, which stated that €48,764.90 of the Appellant's income for 2021 was taxable at 20%, and that €5,491.83 was taxable at 40%. Consequently, there had been an underpayment of income tax of €224.28.

7. On 17 February 2022, the Appellant appealed the Statement of Liability to the Commission. The appeal proceeded by way of a remote hearing on 7 March 2023.

Legislation and Guidelines

8. Section 15(3) of the Taxes Consolidation Act 1997, as amended ("TCA 1997") provided for the 2021 tax year that

"*Subject to subsections (4) and (5) –*

(a) where an individual is charged to tax for a year of assessment in accordance with section 1017 or 1031C, and

(b) both the individual and his or her spouse or civil partner are each in receipt of income in respect of which the individual is chargeable to tax in accordance with that section,

the part of his or her income chargeable to tax at the standard rate specified in column (1) of Part 3 of the Table to this section shall be increased by an amount which is the lesser of –

(i) €26,300, and

(ii) *the specified income of the individual or the specified income of the individual's spouse, whichever is the lesser*."

The amount specified in column 1 of Part 3 of the Table was "*the first €44,300*".

Submissions

Appellant

9. In her Notice of Appeal, the Appellant stated that

"*My husband died* [redacted]*.2021 - I always have been the assessable spouse for our married life.*

I notified [the Respondent] of same and an Amended Tax Cert was issued 29.6.2021. I queried this cert - as the assessable spouse I had only been given the benefit of the Married Credit and not the Married Band. Another Amended Tax Cert issued 8.7.2021.

I was subsequently awarded Widows Pension and another Amended Tax Cert issued 19.7.2021. I queried this as the Tax Band was reduced by €10,842.00 (52 weeks) and I would only be in receipt of it for 38 weeks. I was advised by [the Respondent] via phone to make sure to do my Tax Return at end of year as I would be entitled to Tax back.

I submitted my return In January 2022 including my medical expenses. As I heard nothing, 14.2.2022 I phoned [the Respondent], I was advised to fill out a Form 12. A subsequent conversation on the same day with [the Respondent] told me I did not require it as I was the assessable Spouse. He generated a review and it issued 14.2.2022.

This review tells me that my total earnings are €54256.73. €48764.90 @ 20% and €5491.83 @ 40%

This is contradictory to my Tax Credit Cert of 19.7.2021 which clearly states that Income over €59,758.00 will be taxed at 40%.

I have spoken with [an officer of the Respondent] 15.2.2022 who informed me they did not have a copy of the Tax Cert that issued to me on 19.7.2022 and I sent a copy of it to her on the Receipts Tracker as this is the only way it would upload. I received a reply from her 15.2.2022.

[…]

My query stills remains unanswered and I still have a Tax Bill for €224.28. I am disputing this amount as my Tax Cert of 19.7.2022 clearly states I will not pay tax at 40% unless my earnings are over €59,758.00.

I also queried if I am getting the benefit of being the assessable spouse and the €24,800 as per the example on [the Respondent's] web site."

10. At the hearing herein, the Appellant reiterated the above and further stated that she considered the example provided on the Respondent's website, which shows the surviving spouse receiving an increase of €24,800 above their own income of €42,800 taxable at 20%, to be "*misleading and open to misinterpretation*." She also stated that she found the Respondent's dealings with her to have been unsatisfactory and unprofessional during a most stressful time of her life.

Respondent

11. In its Statement of Case, the Respondent stated *inter alia* that

"*[The Appellant] is a PAYE taxpayer who was widowed [redacted]/2021. She was the assessable spouse; and she received an updated Tax Credit Certificate (TCC) on 19/07/2021 which, due to a system's error, incorrectly stated she be taxed at the standard rate on her income up to €70,600 for 2021, reduced by the amount her DSP Survivor's Pension, meaning that she would be taxable at twenty percent on her income up to €59,758 and at forty percent on her income above that figure. Regrettably, this error was not noticed and corrected when she contacted [the Respondent] shortly after the TCC issued.*

The TCC should have reflected what is set out in Section 15(3) TCA, which directs that, for 2021, an assessable spouse was entitled to be taxed at the standard rate on income up to €44,300, which could be increased by the amount of the non-assessable spouse's earnings up to a maximum of €70,600. Earnings less than that amount were liable to tax at twenty percent and earnings above at forty percent.

In [the Appellant's] case, this meant that for 2021 she was liable to tax at twenty percent on €44,300, extended by the amount of her late husband's income for the year of €4,464.90. Their joint income for the year of €54,256.73, therefore, was liable to tax at twenty percent on €48,764.90, with the balance of €5,491.83 being liable at forty percent. This was reflected on her Statement of Liability for 2021, leaving her with an underpayment for the year of €457.48, reduced to € 224.28 by a health expenses claim of €233.20.

[…]

While the TCC issued to [the Appellant] on 19/7/2021 was incorrect, the Revenue Payroll Notification (RPN) that issued to her employer shortly thereafter, instructing them how her income was to be treated for tax purposes, did not reflect the information contained in that TCC, but rather the correct tax position as outlined above. The underpayment she is appealing did not, in fact arise as a result of the TCC, but rather as a result of her DSP pension.

[The Appellant] was widowed on [redacted]/2021, but [the Respondent] was only informed of her Survivor's Pension in an update from the DSP on 17/07/2021. This means that when the RPN reflecting this income was issued to her employer and was utilised by the employer for their next payroll run of 8/8/2021 she had already received approx. thirteen weeks of this payment; as a result, those weeks of her pension were not reflected in the reduction of credits and rate bands in the RPN, which is the manner in which such payments are normally taxed. It was the tax outstanding on these additional weeks of DSP payments that resulted in [the Appellant's] underpayment for 2021.

[…]

[The Respondent] would stress that, as already noted above, the underpayment in question did not arise as a result of the incorrect TCC as the information that issued to her employer in the RPN thereafter reflected the correct tax position. However, [the Respondent] would like to take this opportunity to apologise once more for the inconvenience and distress this matter has caused [the Appellant]. Nonetheless, given the above, the Respondent must respectfully suggest that her appeal must fail."

Material Facts

12. The principal facts were not in dispute between the parties. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

    12.1. The Appellant and her husband were taxed under joint assessment, with the Appellant being the assessable spouse.

    12.2. The Appellant's husband died on [redacted] 2021. Amended TCCs issued to the Appellant on 29 June 2021, 8 July 2021 and 19 July 2021.

    12.3. The TCC dated 19 July 2021 stated that income up to €59,758 was taxable at 20%.

    12.4. The Statement of Liability that issued to the Appellant on 14 February 2022 stated that €48,764.90 of the Appellant's income for 2021 was taxable at 20%, and that €5,491.83 was taxable at 40%. As a result, there had been an underpayment of income tax of €224.28.

Analysis

13. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: "*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.*"

14. As set out above, following the death of her husband, the Appellant was provided by the Respondent with a TCC on 19 July 2021 which provided that her income up to €59,758 was taxable at 20%. However, the Statement of Liability that issued on 14 February 2022 stated that €48,764.90 of the Appellant's income for 2021 was taxable at 20%, and that €5,491.83 was taxable at 40%. Consequently, the Respondent stated that there had been an underpayment of income tax by the Appellant of €224.28.

15. The Commissioner has considerable sympathy for the Appellant in this case. He considers that she was understandably aggrieved to be told that she had underpaid tax for 2021, when she had relied in good faith on the TCC provided to her by the Respondent on 19 July 2021. The Respondent has accepted that the TCC was incorrect and has apologised for the error, albeit it states that the underpayment was due to tax outstanding on an additional thirteen weeks of pension payments received by her from the Department of Social Protection.

16. However, while the Commissioner is very sympathetic to the Appellant, it is important to bear in mind the limitations on his jurisdiction, which is focused on "*the assessment and the charge*", as stated by Murray J. at para. 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the Appellant has demonstrated that the Statement of Liability of 14 February 2022 was incorrect as a matter of law.

17. Section 15(3) of the TCA 1997 provides that, in relation to the Appellant, "*the part of…her income chargeable to tax at the standard rate* [i.e. €44,300] <u>*shall*</u> *be increased by an amount which is the lesser of €26,300 and the specified income of the individual's spouse,* <u>*whichever is the lesser*</u>" (emphasis added). Her husband's income for 2021 was stated to be €4,464.90. The Commissioner is satisfied that the correct, and mandatory, interpretation of section 15(3) is that the Appellant's income taxable at the standard rate, (€44,300) was to be increased by the amount of her husband's income (€4,464.90), as that amount was less than €26,300. Anything above €48,764.90 was chargeable at the higher rate, i.e. 40%.

18. Consequently, the Commissioner is satisfied that the Statement of Liability correctly stated the Appellant's liability to income tax for 2021. It stated that €48,764.90 was subject to tax at 20%, and €5,491.83 was subject to tax at 40%. This was in compliance with the provisions of section 15(3) of the TCA 1997. While it was very unfortunate that the Appellant had been provided with an incorrect TCC, the Commissioner is satisfied that the TCC could not displace the mandatory provisions of section 15(3).

19. Therefore, the Commissioner finds that the appeal cannot be upheld. The Appellant was unhappy about a number of aspects of her engagement with the Respondent regarding this matter. She contended that the Respondent had no record of the TCC of 19 July 2021. This was disputed by the representative of the Respondent at the hearing, although he apologised to the Appellant for the inconvenience caused by the initial inability of the person with whom she had been dealing to locate the TCC. Additionally, she believed that

the example provided by the Respondent on its website was misleading, and was liable to be misinterpreted by people who were not practitioners or experts in tax matters.

20. The Commissioner notes the comments made by the Appellant regarding her engagement with the Respondent. However, as previously stated, his jurisdiction is confined to considering whether the Statement of Liability complied with the relevant provisions of the TCA 1997. He has no wider jurisdiction or power to consider the circumstances surrounding the parties’ engagement; however, he appreciates the frustration she felt at a most stressful time of her life.

21. In conclusion, the Commissioner is very sympathetic towards the Appellant in this instance. However, he is satisfied that the Statement of Liability of 14 February 2022 correctly stated her liability to income tax for 2021. Therefore, the appeal is not upheld.

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 is satisfied that the Respondent was correct in stating that the Appellant had an underpayment of income tax in the amount of €224.28 for the tax year 2021.

23. The appeal is hereby determined in accordance with section 949AL of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Simon Noone
Appeal Commissioner
9th March 2023