



Between

43TACD2024



**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This Determination concerns appeals of the decisions of the Revenue Commissioners (“the Respondent”) that the Appellant made an underpayment of income tax for the year 2020 in the amount of €332.92 and an overpayment for the year 2021 in the amount of €56.59. As will be clear from the content of this Determination, the core issue in dispute is whether the Respondent was entitled to charge additional Universal Social Charge (“USC”) to that originally charged and deducted from the Appellant’s income.
2. This appeal is determined, with the agreement of both parties, pursuant to section 949U of the Taxes Consolidation Act 1997 (“the TCA 1997”).

**Background**

3. The Appellant and his spouse are jointly assessed PAYE taxpayers.
4. On 16 September 2020 the Appellant reached the age of 70.

5. On 9 December 2019 the Respondent issued a tax credit certificate to the Appellant for the year 2020 in which it was stated that the reduced rate of USC, provided for under section 531AN of the TCA 1997, was applicable to him.
6. There is no dispute in this appeal that, under this legislation, the reduced rate of USC applies where a person reaches the age of 70 and has aggregate income that does not exceed €60,000.
7. There is, moreover, no dispute that despite it being indicated in the tax credit certificate for 2020, issued at the close of 2019, that he should benefit from the reduced rate of USC, the Appellant's aggregate income for 2019 was in excess of the €60,000 threshold.
8. In the event, the Appellant's income for 2020 was €73,611.83. Notwithstanding the fact that he did not meet the condition relating to the level of his income, the amount of USC charged was at the reduced rate.
9. In December 2020 the Respondent issued a tax credit certificate for 2021 to the Appellant, which again stated that the Appellant would benefit from the reduced rate of USC.
10. In the event, the Appellant's aggregate income for 2021 was €71,368.35 and the USC charged and deducted was at the reduced rate. Again, this was not in conformity with the conditions laid down in legislation.
11. On 30 March 2022 the Appellant filed a Form 11 income tax return for the year 2020 in which he claimed relief on health expenses that he had incurred in the amount of €610.80.
12. On foot of the return filed, the Respondent issued a Statement of Liability for 2020 that assessed the Appellant as having underpaid tax in the amount of €332.92. There is no dispute that this figure was arrived at by calculating the extra USC that would have been due had the standard rate been applied correctly, and subtracting from that sum the overpayments of PAYE made by the Appellant and his spouse, which arose principally from the relief due from health expenses.
13. On 8 April 2022 the Appellant filed his Form 11 income tax return for 2021, in which he also claimed relief on health expenses of €1,110.20 incurred. In this instance the Appellant was assessed as having overpaid tax by €56.69. This figure would have been higher had the Respondent not assessed the Appellant as owing an additional €1,053.51 in USC for that year based on the application of the standard rate.
14. The Appellant appealed the Statements of Liability issued in respect of 2020 and 2021 to the Commission by way of Notices of Appeal dated 16 May 2022.

## Legislation and Guidelines

15. Section 531AM of the TCA 1997 provides for a tax on gross income called universal social charge.

16. Section 531AN of the TCA 1997, entitled “Rate of Charge” provides:-

*“(1) For each tax year an individual shall be charged to universal social charge on his or her aggregate income for the tax year—*

*(a) at the rate specified in column (2) of Part 1 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 1 of that Table where the individual is—*

*(i) aged under 70 years, or*

*(ii) aged 70 years or over at any time during the tax year and has aggregate income that exceeds €60,000,*

*or*

*(b) at the rate specified in column (2) of Part 2 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 2 of that Table where the individual is aged 70 years or over at any time during the tax year and has aggregate income that does not exceed €60,000.*

[...]

(8)

### TABLE

#### PART 1

<i>Part of aggregate income (1)</i>	<i>Rate of universal social charge (2)</i>
<i>The first €12,012</i>	<i>0.5 per cent</i>
<i>The next €10,908</i>	<i>2 per cent</i>
<i>The next €47,124</i>	<i>4.5 per cent</i>
<i>The remainder</i>	<i>8 per cent</i>

#### PART 2

<i>Part of aggregate income</i> (1)	<i>Rate of universal social charge</i> (2)
<i>The first €12,012</i>	<i>0.5 per cent</i>
<i>The remainder</i>	<i>2 per cent</i>

## **Submissions**

### *Appellant*

17. The Appellant submitted that the Respondent had made a mistake in applying the reduced rate of USC for the years 2020 and 2021. He was not responsible for this and, therefore, the Respondent should not be permitted to revisit the amount of USC originally deducted. He made the point that his income had, for numerous years before 2020, been in excess of €60,000 and that the Appellant should be bound by its original calculation, which reflected the information set out in the tax credit certificates for 2020 and 2021. He submitted that he had been relying on obtaining refunds as a consequence of his health expenditure in these years and his being deprived of them was an injustice.

### *Respondent*

18. The Respondent accepted that it had made an error in the application of the reduced rate for 2021 in circumstances where the Appellant, though having reached the age of 70, had not met the second condition that his income be no more than €60,000. It acknowledged that the error was regrettable.

19. The Respondent submitted however that it was incumbent on it to apply the law in issuing the appealed Statements of Liability and submitted that the Commissioner should therefore affirm the decisions under appeal.

## **Material Facts**

20. The facts material to this appeal were not in dispute and were as follows:-

- on 16 September 2020 the Appellant turned 70 years old;
- for numerous years prior to 2020, including 2019, the Appellant's income exceeded €60,000;
- the Respondent issued to the Appellant tax credit certificates for 2020 and 2021 in December 2019 and 2020 respectively, which stated his entitlement to USC at the reduced rate;

- the reduced rate of USC was charged on the Appellant's income for the years 2020 and 2021;
- the Appellant's income for 2020 was €73,611.83 and for 2021 was €71,368.35;
- in March and April 2022 the Appellant filed Form 11 income tax returns for the years 2020 and 2021 in which he claimed, *inter alia*, tax relief in respect of health expenses incurred in these years;
- in calculating the Appellant's liabilities for these years, the Respondent applied relief in respect of these health expenses but calculated additional USC as owing on account of the application of the standard rate, rather than the reduced rate;
- the Statements of liability for 2020 and 2021 assessed the Appellant as having underpaid tax in the former year in the amount of €332.92 and overpaid in the latter year in the amount of €56.69;
- the Appellant appealed these Statements of Liability to the Respondent.

### **Analysis**

21. It is first necessary to emphasise that an Appeals Commissioner is a quasi-judicial decision maker who possesses no powers other than those conferred by the Oireachtas pursuant to legislation. These powers were the subject of detailed analysis by the Court of Appeal in its judgment in *Lee v Revenue Commissioners [2021] IECA 18*. There, it was held that it is the function of an Appeals Commissioner to assess what tax is owed, if any, by reference to the relevant taxing legislation. It was further held that an Appeals Commissioner is not empowered to determine what tax is owed by reference to arguments based on fairness, equity or legitimate expectation arising from a statement made by the Respondent that it would act in a particular way. Such arguments, by definition, do not involve the interpretation and application of the relevant legislative provisions.
22. In this appeal there is no dispute that section 531AN of the TCA 1997, which sets out the rate of USC to be charged, requires that the Appellant be charged the standard rate of USC for 2020 and 2021 because, although he had reached the age of 70, his income exceeded the threshold for the reduced rate of €60,000. What the Appellant argued, however, is that the Respondent should be held to what the tax credit certificates said would happen and what did in fact happen – i.e. that the reduced rate would be applied. He argued this on the grounds that it was the Respondent who made the mistake and its

effect was that he was deprived of tax refunds arising from health expenses that he incurred that would have been due to him were it not for its error.

23. The Commissioner has sympathy for the Appellant given that he had hoped to be receiving a refund and understands that mistakes of the kind made can give rise to problems for taxpayers as regards their financial planning and frustration. Despite this, the Commissioner must find that the Appellant's appeal cannot succeed given that the legislation requires the application of the standard rate of USC for 2020 and 2021, rather than the lower rate. In calculating the amount of tax underpaid and overpaid for these years in the relevant Statement of Liability, the Respondent allowed the health expenses claimed. He does not, therefore, appear to have been deprived of anything to which he was entitled pursuant to legislation. The Statements of Liability therefore stand affirmed.

### **Determination**

24. The Respondent's decisions that the Appellant underpaid tax for the year 2020 in the amount of €332.92 and overpaid tax for the year 2021 in the amount of €56.69 stand affirmed and the Appellant's appeal is held to fail.
25. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

26. 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**

27. 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 'COHiggins', located in the upper right quadrant of the page.

Conor O'Higgins  
Appeal Commissioner  
11 December 2023