



Ref: 116TACD2020

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 29 August 2016 by way of a "PAYE/USC End of Year Statement (P21) For the tax year 2015" (treated as if it were an assessment to tax raised on the Appellants), assessed the Appellant to income tax on his entire income. This assessment resulted in an underpayment in the amount of €200.97.
4. The Appellant appealed the notice of assessment to the Tax Appeals Commission on 20 September 2016.

5. The underpayment arose because the Appellant was in receipt of illness benefit in the amount of €1,002.65 from the Department of Employment Affairs and Social Protection.
6. These 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;

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

- (i) disability benefit,*
- (ii) unemployment benefit,*
- (iii) injury benefit which is comprised in occupational injuries benefit, and*
- (iv) pay related benefit.*

(b) Amounts to be paid on foot of the benefits to which this subsection applies ... Shall be deemed –

- (i) to be profits or gains arising or accruing from an employment...*
- (ii) to be emoluments...*

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 he is not responsible for the failure of his former employers to deduct tax on remuneration received by him during the time he worked in Ireland.



10. The Appellant submitted that he is not obliged in any way to pay the underpayment demanded by Revenue in the amount of €200.97.
11. The Respondent submitted that Appellant worked for his employer during 2015 and has since returned to Poland.
12. The Respondent submitted that the liability arose on the Illness Benefit of €1,005.65 received by the Appellant during 2015. The consequent tax liability of €200.97 is due and payable by the Appellant.
13. The Respondent outlined that the assessment was raised in accordance with section 997(3) of the TCA 1997 as amended.

Analysis and findings

14. 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 illness benefit is an emolument subject to income tax.
15. 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.
15. The Appellant seeks to attribute responsibility on his employer to deduct the correct amount of tax for the year 2015 and that a failure to do so is not his responsibility.
16. It is a common feature of the PAYE system that it sometimes fails to collect the exact amount of income tax due by an employee during the course of any tax year. This failure can arise from many factors such as a change in employment, failure to capture correct tax credits and deductions or the failure to include all income in the computation of gross pay.
17. Revenue frequently review PAYE taxpayers either on request or from periodic revision with all known income and it computes the precise tax liability in accordance with the Taxes Acts. This review concludes whether or not there is an over or underpayment of income tax for the year under review. In the instant case to which this appeal relates an underpayment of €200.97 was correctly computed by the Respondent.

18. The Respondent has correctly made an assessment in the form of a “PAYE/USC End of Year Statement (P21) For the tax year 2015” that includes all of the Appellants income, deductions and tax credits in arriving at the Appellant’s income and tax liability for 2015.
19. 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. Their jurisdiction 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.
20. 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 his employer to deduct the correct tax in such a way as to avoid the underpayment that arose for 2015.
21. 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.’*
22. 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 2015 is incorrect.

Determination

23. 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 2015 is as assessed by Revenue.

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

CHARLIE PHELAN
APPEAL COMMISSIONER

15 April 2020