100TACD2021

BETWEEN

THE APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant against the Revenue Commissioners ("the Respondent") to the Tax Appeals Commission ("the Commission"). It relates to the Respondent's amended PAYE/USC End of Year Statements, otherwise known as P21s issued in respect of the years 2017 and 2018. The appeal was submitted on 28th January 2020. After an initial issue over the dates and years of tax in dispute, the sums in dispute were clarified and established.

2. The amount of tax concerned is €1,385.12 for the years 2017 and 2018. There is interest calculated on the amount due but that interest is outside the appeal.

3. By agreement of the parties this appeal is determined in accordance with section 949U Taxes Consolidation Act as amended (hereinafter referred to as the TCA 1997).

Background

4. On 8th of April 2019, the Appellant completed e-Form 12 returns for the years 2017 and 2018 using Revenue's online submission of such forms service. The Appellant claimed relief in respect of Permanent Health Insurance (PHI), Health Expenses and Medical Insurance Relief. The claim for Permanent Health Insurance was made in error. The relief was granted based on the e-Form 12. But it could not be substantiated on verification and hence was withdrawn. This led to a balancing statement from Revenue specifying an underpayment of tax by the Appellant, as set out below.

5. The Appellant is taxed under the Pay-As-You-Earn (PAYE) system and is jointly assessed with her husband. She is the assessable spouse. On the 9th of April 2019, PAYE/USC End of Year Statements (P21s) issued, and tax was refunded, apportioned and credited directly to both the bank account of the Appellant and her spouse.

6. On16th of October 2019, and on foot of a compliance verification check, it was established that the Appellant could not provide documentation in support of her claim for PHI relief. As the relief could not be validated, it was withdrawn, resulting in a tax liability in respect of the years 2017 and 2018. Her claim for health expenses and medical insurance was allowed as supporting documentation was received.

7. On 21st of January 2020 the amended PAYE/USC End of Year Statements (P21s) issued showing an underpayment of €1,385.12 as a result of the withdrawal of the PHI relief broken down as follows:

   2017 - €704.32
   2018 - €680.80

8. As stated above, on 28th of January 2020, the Appellant duly appealed against the amended PAYE/USC End of Year Statements (P21s) issued in respect of the years 2017 and 2018.

9. The facts are not in dispute in this appeal.

Legislation

10. As set out in the enclosed Appendix for ease of reference, the relevant legislative provision pertaining to the Appellant's appeal is section 471 TCA 1997 - Relief for contributions to permanent health benefit schemes.

Submissions

Appellant

11. The Appellant acknowledges that an error was made in claiming the relief. But the Appellant stated that the Revenue should not have credited her bank account if she was not entitled to the refund and should have checked the validity of her claim.

Respondent

12. The Respondent submitted that in the absence of documentary evidence to support membership and contributions to a PHI scheme, the Appellant is not entitled to the tax relief as outlined in section 471(2) TCA 1997 which states:-

> *"Where an individual for a year of assessment proves that in the year of assessment he or she made a contribution or contributions to a bona fide permanent health benefit scheme, or schemes, the individual shall be entitled, for the purpose of ascertaining the amount of income on which he or she is to be charged to income tax, to have a deduction of so much of the contributions as does not exceed 10 per cent of his or her total income for that year of assessment made from his or her total income".*

13. The onus is on the Appellant to ensure the validity of the credit/relief entitlement before submitting any application for tax relief to Revenue. In line with the Revenue's Customer Service Charter, the presumption of honesty prevails. Under Revenue's compliance

programme verification checks using risk analysis systems are carried out to determine the authenticity of claims made and if the taxpayer cannot verify the claim, then the claim will not be granted and repayment sought.

Analysis

14. In appeals before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments to tax are incorrect.

15. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 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.'*

16. The onus in this appeal rests on the Appellant and the question is whether the Appellant can substantiate her claim to income tax relief in respect of her PHI contributions for the years 2017 and 2018. The self-assessment system works on the basis that if a taxpayer is asked to verify any claim for relief, they can do so. The Appellant has been unable to supply a copy of the PHI policy and any contributions made. As such, the claim for tax relief is not due and can be withdrawn.

17. The Appellant has failed to discharge the onus of proof required to substantiate her claim that she was entitled to income tax relief in respect of her PHI contributions for the years 2017 and 2018 as she was unable to provide any supporting documentation. The Commission finds that the Respondent has no duty to check the many thousands of claims for relief made each year by the millions of taxpayers. But, it is entitled on checking a sample that if that particular claim for relief cannot be verified, then the relief can be withdrawn and there is a financial consequence. The Commissioner has sympathy with the position the Appellant finds herself in and appreciates that she made an error. The Commissioner appreciates that it can be a challenge when a liability that an individual has not appreciated is due is demanded. But, that said, it does not and cannot change the position that the monies in the balancing statement are correct and the payment had to be made by the Appellant to the Respondent.

Determination

18. For the reasons set out above, the Appellant has failed to discharge the onus of proof and is thereby unable to succeed in this appeal. The appeal is denied. As a result, the Commissioner determines that the PAYE/USC End of Year Statements (P21s) (treated as if they were assessments to tax raised on the Appellant) shall stand.

19. This appeal is hereby determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

Marie-Claire Maney
Chairperson
Appeal Commissioner
1st June 2021

Appendix – Legislation

TCA 1997

Section 471-Relief for contributions to permanent health benefit schemes

(1) In this section –

"*benefit*" and "*permanent health benefit scheme*" have the same meanings respectively as in *section 125*;

"*contribution*", in relation to a permanent health benefit scheme, means any premium paid or other periodic payment made to the scheme in consideration of the right to benefit under it, being a premium or payment which bears a reasonable relationship to the benefits secured by it.

(2)Where an individual for a year of assessment proves that in that year of assessment he or she made a contribution or contributions to a bona fide permanent health benefit scheme or schemes, the individual shall be entitled, for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction of so much of the contributions as does not exceed 10 per cent of his or her total income for that year of assessment made from his or her total income.

(3)In a case where the amount of a contribution made by an employer to a permanent health benefit scheme is charged to income tax under *Chapter 3* of *Part 5* as a prerequisite of the office or employment of a director or employee, that amount shall be deemed for the purposes of *subsection (2)* to be a contribution made by the director or employee to the scheme in the year in respect of which it is so charged to income tax.