



107TACD2021

BETWEEN

THE APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant relating to a balancing statement in respect of the tax year for 2016 dated 10th May 2017 pursuant to the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The Appellant submitted the appeal to the Tax Appeals Commission ("the Commission") in relation to this balancing statement from the Revenue Commissioners ("the Respondent").
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

Background

3. The Appellant is appealing the Balancing Statement issued to her in relation to 2016. The Appellant had contacted the Respondent's tax office in November 2016. It related to seeking information as to transferring to joint assessment for income tax to utilise all the available tax at the lower rate bands. The Appellant was now working part-time, having previously worked full-time. The joint assessment would mean transferring what is known as the Standard Rate Cut Off Point (SRCOP) from the Appellant to her husband to avail of the benefit of the various bands of tax rates.
4. In November 2016 when the Appellant contacted the Respondent, the Appellant and her husband were still on the Respondent's records as being single, which meant they were not receiving the benefit of their married status. This was adjusted by the Respondent and small refunds for the tax years 2013 to 2015 were shown on the Balancing Statements on 28th November 2016.
5. The documentation demonstrates that the Appellant informed the Respondent during that telephone call that her income for the year was €24,000 when in fact the income the Appellant should have operated on was €35,600. The Appellant informed the Respondent that she was working part-time and her income was €24,000. Based on this information, the Appellant's husband and his SRCOP was increased by €9,518 to €43,318 (including expenses of €518). The Appellant's SRCOP was reduced to €24,800 which, if her income

had been €24,000 would have resulted in no change in her take home pay. In addition, the Appellant's husband and his employer operated on revised figures but the Appellant's employer did not operate on the revised figures. Hence, the tax that had to be paid resulted in these extenuating circumstances. If the Appellant's employer had operated on the correct figures, it would have resulted in more tax being collected via PAYE.

6. The Respondent sent the Appellant a letter dated 19th July 2017 setting out the tax that the Appellant would have paid if she had been taxed on the correct income of €35,600. It would have meant a difference of an additional €1728.06.
7. The Appellant is appealing the PAYE amount from the correction on the Balancing Statement. The Appellant is appealing on the grounds that she was given incorrect advice by Revenue in November 2016 in relation to unused tax credits transferred to her husband. The Appellant was not aware that the transfer of the tax credits took effect from the commencement of the tax year in question.
8. The facts in relation to the Appellant and her husband's earnings are not in dispute in this appeal. Both parties confirm that a telephone conversation took place in November 2016 in relation to the Appellant's tax affairs. The dispute appears to be in relation to the earnings that the Appellant considered she was being paid and the change in her full-time to part-time status part-way through a tax year and the effect of being jointly assessed for the tax year in question and reversing any decisions.

Legislation

9. The relevant legislation that applies in respect of this appeal is section 1017 TCA 1997 and 1018 TCA 1997 and 865 TCA 1997 - Repayment of Tax. The Commissioner has also considered section 1019 TCA 1997.

1017.—(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment—

(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,

(b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and

(c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.

1018.—(1) A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

(2) Where an election is made under subsection (1) in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.

(3) Notwithstanding subsections (1) and (2), either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment.

(4) (a) A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016.

(b) Where a husband or his wife has duly given notice under paragraph (a), that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.

10. Section 865 TCA 1997 states as follows:

‘(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

[(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.]

[(3A)(a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person’s emoluments for a year of assessment where, on the basis of the information

available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

- (a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,*
- (b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and*
- (c) in the case of claims made –
(i) under subsection (2) and not under any other provision of the Acts, or
(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,*

after the end of the chargeable period to which the claim relates.

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision].

Submissions

11. The Appellant submitted that due to incorrect advice given to her by the Respondent in 2016, she would not have transferred tax credits to her husband and she was not informed that joint assessment has to be backdated to January of that tax year. As stated above, the Appellant appealed for a refund of tax in relation to the Balancing Statement for 2016.
12. The Respondent submitted that the Appellant has been taxed correctly. The Appellant had married in 2011 but their tax records confirmed that they were single. This was adjusted accordingly and they were given refunds for the respective years in relation to this change of status. The Respondent stated that during the telephone conversation in 2016 the Appellant had informed the Respondent that her gross income for the year was €24,000. But the Appellant's income for the year was €35,600 rather than €24,000. The Respondent submits that the Appellant has been taxed correctly and the Balancing Statement is correct. Hence, the underpayment of €1552.81 was to be automatically offset against the underpayment until fully collected.

Analysis and findings

13. The Commissioner has sympathy for the position the Appellant found herself in. There is no doubt that tax treatment in relation to tax credits, joint assessment and the SRCOP is challenging to understand. But, the Commissioner is satisfied that the tax treatment is correct based on the decisions that the Appellant made in 2016. There is no discretion

afforded to the Commissioner to consider the tax treatment and the tax set out in the Balancing Statement, if the tax treatment is correct. The Appellant was correct to appeal to seek clarity on the situation.

14. The Appellant has informed the Respondent that she wanted to be assessed jointly for tax purposes with her husband. The applicable section 1017 and section 1018 was applied correctly by the Respondent. That means that the joint assessment is for the whole year and there is no facility for part-years according to the legislation. The Appellant received the benefit of the married status and her husband received the benefit of his income being assessed jointly with hers in relation to the SRCOP. The Balancing Statement is therefore correct. The Commissioner has no jurisdiction to enquire about any advice given by the Respondent to the Appellant in these circumstances, especially as it appears from the information that the Appellant and her employer were acting on incorrect information, not due to the Respondent's action. In addition, the Appellant as a member of a profession should seek advice from the payroll section of her employer, from publicly available information and any applicable trade union or Citizen Advice Centres. That may assist in the future.
15. The Commissioner's task is to assess if a charge to tax is due and if so, if that has been correctly applied. In this case, the Appellant elected to be assessed with the transfer of the SRCOP to her husband and the joint election. That meant that it would take place within that tax year. Her husband gained the benefit of the SRCOP. The Balancing Statement is set out in accordance with the correct provisions and section 1017 and section 1018 have been applied correctly. The Appellant could have withdrawn the joint assessment but it would have had to have taken place in writing before the end of the tax year. That did not happen. Hence, the Respondent has applied section 1017 and section 1018 correctly.
16. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of the tax paid is not due from that person. Section 865(3) provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
17. Section 865(1)(b)(i) TCA 1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person. Section 865(1)(b)(ii) provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
18. The Appellant sought a repayment of tax on the basis that an amount of tax paid by her for the tax year 2016 was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means that the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayment of tax to be due, the Appellant must have made a valid claim to the Respondent. In this case, there is no valid claim based on the joint assessment made and that decision.

19. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant. The Appellant transferred her Standard Rate Cut Off Point from her to her husband. The onus was on the Appellant to provide as much correct information to the Respondent as possible in any dealings with them. The Appellant was not claiming the correct tax credit in relation to married status and that was corrected by the Respondent. The Appellant would have benefited if she provided the Respondent with her full correct details for the year. It is incumbent on individuals to know the tax year and hence their full earnings for that year. The decision to be jointly assessed and hence the transfer of the SRCOP may not have occurred if the Respondent had been provided with the correct information as to the Appellant's earnings. The Respondent cannot be expected to know individuals earnings and must rely on the information provided being as fulsome as possible for the tax year in question.
20. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

Determination

21. The Commissioner determines that the Appellant has been assessed at the correct tax and the Balancing Statement is correct. Hence, the appeal is not successful. The Commissioner appreciates that the Appellant will no doubt be disappointed by this determination. The Appellant was correct to appeal to have clarity on the position and the Commissioner has sympathy for the situation the Appellant finds herself in. But, the Balancing Statement is correct and no tax can be refunded based on the statutory provisions.
22. This Appeal is hereby determined in accordance with the 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
14th June 2021