



71TACD2021

Between/



**Appellant**

**V**

**THE REVENUE COMMISSIONERS**

**Respondents**

### **DETERMINATION**

#### **Introduction and Grounds of Appeal**

1. This is an appeal against amended P21 assessments to income tax for the years 2015 and 2016, raised by the Respondent on the 22<sup>nd</sup> of June 2017, in relation to the Appellant and the Appellant's spouse. The Appellant and his spouse are jointly assessed to tax pursuant to S.1017 TCA 1997, as amended.
2. The Appellant is a person entitled to a contributory pension pursuant to S.108 of the Social Welfare Consolidation Act 2005, as amended ("Principal Act"), having made the contributions and satisfied the conditions set forth in S.109 of that Act.
3. The Appellant has claimed and been granted that pension for the years under appeal. The amount of the pension has been increased pursuant to S.112(1) of the Principal Act because the Appellant's spouse is a "*qualified adult*" within the meaning of the Act.
4. The Appellant received pension payments amounting to €23,031 and €23,370 for the years 2015 and 2016 and he has been assessed to income tax on same. The Appellant submits that the increase in his contributory state pension, relating to

his spouse being a “qualified adult”, is attributable to his spouse. Accordingly, he submits that the said sum or increase attributable to his spouse should be taxed as his wife’s income, with the benefit of the PAYE tax credit and the transferable amount taxed at 20%.

5. The Respondent submits that the “Adult Dependent Payment” is deemed, pursuant to S.126 (2B), to be the Appellant’s income for tax purposes, for the years under appeal.
6. On 22 June 2017, the Appellant received PAYE Balancing statements (P21’s) for the tax years 2015 and 2016, indicating underpayments of income tax of €149.72 and €1,585.74 respectively.
7. The Appellant duly appealed the P21 Assessments to the Tax Appeals Commission on [REDACTED].

### **Relevant legislation**

8. The key statutory provision of the Social Welfare Consolidation Act 2005, in the context of this appeal is section 112(1), which provides as follows:

*“Subject to this Part, the weekly rate of old age (contributory) pension State pension (contributory) shall be increased by the amount set out in column (3) of Part 1 of Schedule 2 for any period during which the beneficiary has a qualified adult, subject to the restriction that a beneficiary shall not be entitled for the same period to an increase of pension under this subsection in respect of more than one person.”*  
*(emphasis added)*

9. Section 126(2) of the Taxes Consolidation Act 1997, as amended, provides for the taxation of certain benefits payable under the Social Welfare Acts, and states:-

*“(a) This section shall apply to the following benefits payable under the Acts-*

- (i) widow’s (contributory) pension,*
- (ii) orphan’s (contributory) pension*
- (iii) retirement pension, and (iv) old age (contributory) pension.*

*(b) Payment of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.”*

10. A new subsection 126(2B) was inserted by the Finance (No. 2) Act 2013 and took effect from 1 January 2014, providing that:-

*“Notwithstanding the provisions of section 112(1), where an increase in the amount of a pension to which section 112, 113, 117 or 157, as the case may be, of the Social*

*Welfare Consolidation Act 2005 applies is paid in respect of a qualified adult (within the meaning of the Acts), that increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act.” (emphasis added)*

11. Section 15 TCA 1997 prescribes in tabular format, the rates at which income tax is charged and the bands of income to which the rates are applied. Section 15 (2) sets out the graduated charge to income tax and the tax bands applicable where a husband and wife are treated as jointly assessed in accordance with S.1017 TCA 1997.

12. Section 472(4) of the 1997 Act provides that:-

*“Where, for any year of assessment, a claimant proves that his or her total income for the year consists in whole or in part of emoluments (including, in a case where the claimant is a married person assessed to tax in accordance with section 1017, or a civil partner assessed to tax in accordance with section 1031C, any emoluments of the claimant’s spouse or civil partner deemed to be income of the claimant by that section for the purposes referred to in that section) the claimant shall be entitled to a tax credit (to be known as “the employee tax credit”) of –*

*(a) Where the emoluments (but not including, in the case where the claimant is a married person or a civil partner so assessed, the emoluments, if any, of the claimant’s spouse or civil partner) arise to the claimant, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650, and*

*(b) Where, in a case where the claimant is a married person or a civil partner so assessed, the emoluments arise to the claimant’s spouse or civil partner, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650.”*

### **Analysis and Findings**

13. The submissions made by the Appellant and the Respondent are set out in Appendix 1.

14. In response to the points advanced by the Appellant, the Respondent submits that S.126 TCA 1997, as amended, sets out the tax treatment of various payments made under the Social Welfare code, including payments which, subject to certain conditions, can attract an increase in respect of a qualified adult. The State pension (contributory) paid by the Department of Social Protection is a taxable source of income pursuant to the legislation.

15. The Respondent further submits that any increase in that pension in respect of a qualified adult is, for tax purposes, deemed to be the Appellant's income for the years under appeal.
16. The Respondent cited in support of this submission the provisions of section 126 (2B) TCA 1997, which provides that:

*"Notwithstanding the provisions of section 112(1), where an increase in the amount of a pension to which section 112, 113, 117 or 157, as the case may be, of the Social Welfare Consolidation Act 2005 applies is paid in respect of a qualified adult (within the meaning of the Acts), that increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act."*
17. Accordingly, the Respondent contends that the PAYE employee tax credit and the increased SRCOP are not available to a qualified adult dependant in respect of that increase. In this appeal, the Respondent submits that the PAYE tax credit and increased SRCOP, is only available in respect of the private pension earned by the Appellant's spouse.
18. The use of the word 'shall' in section 126 (2B) TCA 1997, indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which this deeming provision might be altered, irrespective of any inconsistency in the issuing of the Appellant's Tax Credit Certificates.
19. I am therefore satisfied that, pursuant to Section 126 (2B) TCA 1997, the increased pension is deemed under the Taxes Acts to be the Appellant's income for the years under appeal.
20. Accordingly, the Respondent has correctly attributed the increased pension to the Appellant and has correctly limited the Appellant's wife's PAYE Tax Credit and increased SRCOP, pursuant to Section 472 (4)(b) TCA 1997 and Section 15 TCA 1997, to €184 and €920 respectively.
21. In his submissions, the Appellant made reference to his 2019 tax situation and to changes, including elements of backdating, he had made with the Department of Social Protection in relation to entitlements associated with his wife. I have not address any matters relating to these issues as they fall outside the tax years related to this appeal.

### **Determination**



22. Pursuant to the wording of Section 126 (2B) TCA 1997, and in particular the use of the word “shall”, I determine that I do not have discretion as regards the application of this provision. As a result, I have no alternative but to determine that the increased pension is deemed to be the Appellant’s income for the years under appeal.
23. I determine that the Appellant’s appeal is unsuccessful and that the amended P21 Balancing Statements should stand.
24. The appeal hereby is determined in accordance with section 949AK (1) TCA 1997.

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**Paul Cummins**  
**Appeal Commissioner**  
*Designated Public Official*

**25 MARCH 2021**

## Appendix 1- Submissions

### Appellant's Submissions

#### 25. The Appellant submitted the following in their Grounds for Appeal on 07/07/17:

*"This all came about from my wife giving me dental expenses for 2015/2016 earlier this year. I forwarded these with relevant MED forms. I was expecting to get back small amounts €15 and €185 but instead when I received the P21 balancing statements the final results showed underpayments for each year. Having investigated this matter I realise the problem rests with differing interpretations of "PAYE tax credits" within the PAYE system. For the year 2016 tax credit certificates were issued to me and my employer showing "PAYE tax credit" of €3300 of me, and when I visited tax office last year the young lady was very helpful and carried over €184 to "spouse" to cater for a small private pension that my wife has. But then when I get the P21 PAYE balancing statement dated 22<sup>nd</sup> June 2017 the PAYE tax credit is reduced against me to €1650 resulting in me owing €1584.24.*

*For the year 2015 I surrendered a small private pension and paid over €5000 tax on this, I was informed in the tax office that I would be entitled to a tax rebate at the year end. This did not happen as I was informed "all my credit had been used up". Then when I expect at least some medical expense I'm informed there was an underpayment of €149.*

*It seems to me there are two different factions working in personal taxation, one section working with the tax payer and striving to be very fair and the other faction working to make matters as difficult as possible e.g. my last visit (4<sup>th</sup> July) the officer at desk suggested to me to contact "social protection" to determine if my wife was entitled in her own right to her pension because she is treated in taxation matters as being a "dependent" of me.*

*In conclusion tax certificates come out with PAYE tax credit of €3300 and then rejected and reassigned to €1650 or €1650 – zero. Absolutely no consistency. Even my latest tax certificate 22 June 2017 has employee tax credit €3115.80 and spouse €184.20!!!"*

#### 26. The Appellant submitted the following in their Statement of Case on 29/10/19:

*"I have attached my original submission for the record, but my sole intention going forward is to dispute the disbursement of the "employee tax credit" of €1,650 for my wife. I find the situation incredulous that my wife could not avail of this tax credit because she was classified as being "dependent of mine" and not receiving her pension in "her own right".*

*As I hope to show by providing the attached tax credit certificate 2017. This situation was created by Revenue and not through any fault of mine. (balancing statement for 2016) attached which created underpayment.*

*The recent state pension contributory review which has been carried out concerning my wives pension has resulted in an improved pension which has been backdate, resulting in a situation where her pension which is paid in "her own right" would be greater than as a "dependent of mine" and would qualify for employee credit. I note also the most recent tax credit certificate 2019 (see attached) that husband and wife tax credits are grossed, which differs from previous yearly certs. Is this a policy change?"*

27. *The Appellant made the following supplementary submission to their Statement of Case on 26/02/20:*

*"Outline of relevant facts.*

*I visited the tax office on 4th July 2017 to discover the reasons for the underpayments which I had incurred for the years 2015 and 2016. I was informed that following a review of my tax, returns for the years 2015/2016, they had determined that my wife's Contributory State Pension was not eligible for PAYE tax credit of €1650 per annum as her pension was deemed to be paid to her as a "Dependent of Me", and to avail of her PAYE tax credit I should contact Social Protection and have my wife's pension status changed to "In her own right" which would result in a small decrease in her pension. The Tax act being quoted to me is the "Section 472 Taxes Consolidation Act". If this Act allows for my wife's pension payment to be discriminated against because she received it as a "Dependent of me" and not "In her own Right", then this Act needs to be reviewed.*

*This situation inadvertently smoke screened the major cause for these inaccurate P21 Statements.*

*From studying the 2015/2016 P21 Statements I have determined that my normal "Standard Rate Band 1 (cut off €67,000) has not been used in these calculations, which is based on a married couple with two incomes. I have been incorrectly assessed as a married couple with one income, hence a Standard Rate cut off of €43,200, this is totally wrong as I am in still in Employment and receiving old age Pension and my wife has old age Pension and a Private Pension.*

*I have submitted 2015/2016 P21 Statement copies to highlight these discrepancies, and also Tax Credit Certificates pre & post 2015/2016 to show the correct "Standard cut off Rate" applied to me in all other correspondence."*

**Respondent's Submissions**

28. *The Respondent submitted the following in their Statement of Case:*

1. *Statutory provisions being relied on.*

*Section 472, Taxes Consolidation Act*

2. *Outline of relevant facts.*

*The Appellant's Tax Credit Certificates were updated in 2015 and 2016 when figures from the Department of Employment Affairs and Social Protection (DEASP), were supplied to Revenue.*

*On foot of these amendments, along with his own PAYE Tax Credit, the Appellant was granted a portion of his spouse's PAYE Tax Credit.*



*While Schedule E customers are entitled to this Credit, it is restricted to a maximum of €1650 per annum. This is based on the level of PAYE income received. In this case, while the Credit due to the appellant's wife was restricted to the level of her income received, the balance of her PAYE Credit was also given to the Appellant.*

*On foot of application for review of the liability for the two years in question, an overall undercharge of €1,735.46 arose. It was proposed to collect this amount over a two-year period commencing the 1st January 2018.*

## 29. The Respondent submitted the following in their Outline of Arguments:

### *Introduction*

- 1. This is the Appellant's appeal against the Respondent in relation to the interpretation of the PAYE Tax Credits for 2015 and 2016.*
- 2. The Appellant's appeal raises one distinct issue; namely, that his wife should be entitled to a full PAYE Tax Credit as she is a dependant of the Appellant.*
- 3. These Outline of Arguments are made without prejudice to the evidence to be adduced by the parties, and the Respondent reserves the right to make further submissions, either orally or in writing, on matters arising from the Appellant's Outline of Arguments and its oral submissions, during the course of the hearing and by way of closing oral submissions at the conclusion of the appeal.*

### *Background of the Appeal*

*The Appellant is in receipt of the State Contributory Pension and receives an increase for a Qualified Adult Dependant based on his spouse. This increase does not represent a separate source of income for the qualified adult namely the appellant's spouse and as such the Appellants' spouse cannot use her PAYE tax credit in respect of this income.*

*The Department of Employment Affairs and Social Protection (DEASP) update Revenue systems with the details of the State Contributory Pension income along with any increase for the Qualified Adult Dependant. The amount of this income is updated by DEASP during the year as the payment amounts increase in March/April and there is a Christmas Bonus payment. In these circumstances the Appellant was put on a Week 1 basis (noncumulative) to avoid any hardship. However, this meant that tax was not fully collected on the State Pension income and this led to an underpayment for 2015.*

*The underpayment for 2016 was caused by two events. Firstly, updates from DEASP on 20/12/15 and 17/01/16 apparently resulted in a system error whereby the Appellant was allocated his spouse's PAYE tax credit incorrectly.*

*Secondly, in April 2016 the Appellant was in contact with Revenue and his credits were amended. The Appellant's spouse was allocated approximately €185 PAYE Tax Credit and the balance was incorrectly left with the Appellant.*

*Upon the Appellant requesting a review for medical expenses for the two years in question, an overall underpayment of €1,735.46 arose.*

### *The Appellant's Case*

*The Appellant believes that he is entitled to his spouse's full PAYE Tax Credit as she is a dependant of the Appellant.*



*Legislation relevant to the within Appeal*  
*Section 126 Taxes Consolidation Act 1997*

*Section 126 (2B) of the Tax Consolidation Act 1997, as inserted by Section 12 of the Finance (No. 2) Act of 2013, provides that the increase in the State Contributory Pension for a qualified adult is, for tax purposes, part of the pension. Therefore, from the 1st January 2014, the increase for a qualified adult does not represent a separate source of income for the qualified adult. Consequently, the PAYE employee tax credit and extended rate band are not available in respect of the increase for a qualified adult.*

*Section 472 of the Taxes Consolidation Act (TCA) 1997*

*Section 472 of the Taxes Consolidation Act (TCA) 1997 provides for a tax credit known as the "Employee Tax Credit" or "PAYE Tax Credit" to an individual who is in receipt of emoluments to which the PAYE system of tax deduction at source applies or is applied.*

*(The maximum amount of the tax credit for 2015 and 2016 was €1,650).*

*Onus of Proof*

*For the purposes of this appeal, the Respondent asserts that the Appellant is liable to pay tax on his DEASP income and is only entitled to his individual PAYE tax credit and his wife's PAYE tax credit up to the amount of her individual liability.*

*The Respondent's Case*

*The Appellant's case is in relation to the interpretation of the legislation covering the PAYE tax credits and tax treatment of the Adult Dependent Payment.*

*The Appellant qualifies for the Adult Dependant Payment from DEASP based on his relationship with his spouse.*

*The Adult Dependant payment is deemed to be the emolument of the person beneficially entitled to the pension and is taxed by reducing the Appellant's credits and rate band accordingly. Irrespective of the number of sources of emoluments to which the PAYE system of tax deduction at source applies, an individual is entitled to only one Employee Tax Credit. In the case of a husband/wife/civil partner on joint assessment, each individual is entitled to the Employee Tax Credit against his or her respective emoluments and this credit is non-transferrable.*

*Where an individual's income tax liability is less than €1,650, the Employee Tax Credit is restricted to the amount of the liability. In 2016 the Income Tax liability of the Appellant's spouse was €184, therefore she was only due an Employee Tax Credit of €184.*

*The Appellant was in receipt of the balance of his spouse's PAYE Tax Credit to which he was not entitled.*

*Conclusion*

*The underpayment for 2015 is due to the changes in the amount of DEASP income on record during the year. As the Appellant was on a Week 1 tax basis (non-cumulative) the tax was not fully collected at that initial point.*

*The underpayment for 2016 arises because the Appellant was incorrectly allocated his spouse's PAYE Tax Credit. Updates from DEASP on 20/12/15 and 17/01/16 resulted in a system error whereby the Appellant was mistakenly allocated his spouse's PAYE tax credit. The Appellant continued to have the balance of his spouse's PAYE credit for the remainder of the year.*

*Section 472 of the Taxes Consolidation Act (TCA) 1997 provides for a tax credit known as the "Employee Tax Credit" or "PAYE Tax Credit" to an individual who is in receipt of emoluments. In the case of a husband/wife/civil partner on joint assessment, each individual is entitled to the Employee Tax Credit against his or her respective emoluments and is non-transferrable.*