



84TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a refusal by the Respondent to grant Seafarer Allowance to the Appellant for the years 2015 and 2016.
2. This appeal, with the agreement of the parties, is being held without a hearing, under Section 949U Taxes Consolidation Act 1997 (TCA 1997).

Background

3. The Respondent by way of a "PAYE/USC End of Year Statements (P21's) for the tax years 2015, 2016 and 2017 (treated as assessments to tax raised on the Appellant), refused to grant seafarer allowances to the Appellant.
4. The Respondent by way of letter dated 7 June 2018 advised the Appellant that it was withdrawing the Seafarers' Allowance for 2015 and 2016. The Respondent advised that balancing statements (P21's) reflecting this would issue in due course. The P21's in fact issued on 7 June 2018 for 2016 and on 12 June 2018 for 2015.

5. The Appellant lodged an appeal against the Respondent's determination on 21 January 2019.
6. The Tax Appeals Commission (TAC) following correspondence with the parties admitted a late appeal on 3 March 2020.
7. The Appellant is employed by the [REDACTED] as [REDACTED] on board the [REDACTED] vessel [REDACTED] ("the Vessel") since [REDACTED].
8. The Vessel is owned by the [REDACTED] and the vessel's primary role is the servicing of aids to navigation (A to N) (such as Lighthouses, Buoys and Beacons) around the coast of Ireland including Northern Ireland. The Vessel also provides occasional support to the Lighthouse Authorities in the United Kingdom.
9. The vessel's work involves the carriage of cargo in the form of buoys, equipment, construction materials, water and fuel for A to N stations as well as hydrographic survey and wreck response. In addition, spare capacity on the Vessel is marketed on a commercial basis and this work can occasionally take the vessel to European waters beyond Ireland and the UK. Charter work can involve a wide range of operations depending on the individual customer requirements.

Legislation

10. Section 472B of the TCA 1997 as set out in Appendix 1 provides a relief from income tax known as the Seafarer Allowance.
11. The relief where available provides for an entitlement to a tax deduction in the amount of €6,350.
12. A seagoing ship if defined as '*a ship which-*
 - (a) *is registered in the Member's State Register,*
 - (b) *and is used solely for the trade of carrying passengers or cargo for reward.*

Appellant's Submissions



13. The Appellant submitted that s.472B TCA 1997 as set out in the Respondent's Tax Briefing issue 36, describes a seagoing ship as meaning a ship other than a fishing vessel that is registered in the shipping register of a European Member State and is used solely for the purpose of carrying passengers or cargo for reward.
14. The Appellant further submitted that the Vessel is a service vessel which carries fuel, water and navigational equipment (i.e. cargo), to supply and service aids to navigation around the Irish and UK coast.
15. The Appellant advised that the Vessel is chartered by outside agencies to conduct various operations in which their employees will sign on the ship as passengers and the ship will carry their equipment (i.e. cargo) for the duration of the operation.
16. In these circumstances, the Appellant stated that his employer receives reward for these services and for this reason he believed that the Respondent was incorrect to refuse the Seafarer Allowance in respect of his employment.

Respondent's Submissions

17. The Respondent submitted that the allowance was withdrawn on the basis that the definition of a 'sea-going ship', as defined in the legislation, was not met. As per Section 472B (1)(b) the definition of a 'sea-going ship' means a ship which-
 - (a) is registered in a Member State's Register, and
 - (b) is used solely for the trade of carrying by sea passengers or cargo for reward, but does not include a fishing vessel.
18. The Respondent submitted and contended that the Appellant concurred in correspondence, that the [REDACTED] the Vessel engages in a wide variety of activities, including:
 - (a) The servicing of aids to navigation (lighthouses, buoys and beacons),
 - (b) The transport of buoys, equipment, construction materials, water and fuel for A to N stations,
 - (c) Hydrographic survey and wreck response,
 - (d) Commercial work, which involves charters to outside agencies for various operations for 3 months of the year.



19. The Respondent acknowledged that as part of the ship's commercial work the employees of agencies which hire the [REDACTED] the Vessel sign on the ship as passengers and the ship carries their equipment i.e. cargo for the duration of the operation. However, it disagreed with the Appellant's views that this satisfies the legislative definition of '*carrying by sea passengers or cargo for reward*'.
20. The Respondent submitted that the [REDACTED] the Vessel is not *solely* used for the trade of carrying passengers or cargo for reward. Therefore, it does not meet the legislative definition and the Appellant cannot qualify for the Seafarers' Allowance.

Analysis and findings

21. I find the Appellant has not produced enough evidence to support his contention that the [REDACTED] the Vessel is a sea- going vessel used "*solely for the trade of carrying on the trade of carrying by sea passengers or cargo for reward*".
22. The [REDACTED] the Vessel is primarily involved in the work on behalf of its owner which is a maritime organisation (established in the State by or under statute) that delivers an essential safety service around the coast of Ireland, protecting the marine environment, and supporting the marine industry and coastal communities. Its owner provides marine consultancy and advice, vessel and buoy hire, data collection technologies, venue hire and film location services.
23. The Vessel is not used *solely* for the trade of carrying by sea passengers or cargo for reward.
24. Furthermore, the Seafarers' Allowance is not available to an employment with any board, authority or other similar body established in the State by or under statute. In the instant appeal, the Appellant has supplied evidence of his employment with the [REDACTED] which is so established.
25. Accordingly the relief sought by the Appellant is not available to him because he is in an employment where the relief is specifically prohibited because of Section 472B (b) 3 TCA 1997 as follows:

(3)(a) Subject to paragraph (b), this section shall apply to an employment other than



(i) an employment the emoluments of which are paid out of the revenue of the State, or

(ii) an employment with any board, authority or other similar body established in the State by or under statute.

26. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemption, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.
27. In the High Court case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at par.22 Charleton J. stated:
'The burden of proof in this appeals 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.'

Determination

28. I determine that the Appellant has not succeeded in establishing an entitlement to the Seafarer Allowance for the years 2015 and 2016 pursuant to Section 472B TCA 1997. I uphold the decision of the Respondent refusing the Seafarer Allowance.
29. The appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

22 March 2021



Appendix 1

Section 472B Seafarer Allowance

[(1) In this section –

“*authorised officer*” has the same meaning as in section 818;

“*employment*” means an office or employment of profit such that any emoluments of the office or employment of profit are to be charged to tax under Schedule D or Schedule E;

“*international voyage*” means a voyage beginning or ending in a port outside the State;

“*Member State*” means a member state of the European Communities;

“*Member State’s Register*” shall be construed in accordance with the Annex to the Official Journal of the European Communities (No. C205) of the 5th day of July, 1997;

“*qualifying employment*” means an employment, being an employment to which this section applies, the duties of which are performed wholly on board a sea-going ship on an international voyage;

“*qualifying individual*” means an individual who –

(a) holds a qualifying employment, and

(b) has entered into an agreement (known as “*articles of agreement*”) with the master of that ship;

“*sea-going ship*” means a ship which –

(a) is registered in a Member State’s Register, and

(b) is used solely for the trade of carrying by sea passengers or cargo for reward, but does not include a fishing vessel.

(2) For the purposes of this section –

(a) an individual shall be deemed to be absent from the State for a day if the individual is absent from the State at the end of the day, and

[(b) a port outside the State shall be deemed to include a mobile or fixed rig, platform or installation of any kind in any maritime area.]



(3)(a) Subject to *paragraph (b)*, this section shall apply to an employment other than –

(i) an employment the emoluments of which are paid out of the revenue of the State, or

(ii) an employment with any board, authority or other similar body established in the State by or under statute.

(b) This section shall not apply in any case where the income from an employment –

(i) is chargeable to tax in accordance with section 71(3), or

(ii) is income to which section 822 applies.

