



BETWEEN/

THE APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal by the Appellant to the Tax Appeals Commission (“the Commission”) against a refusal by the Revenue Commissioners (“the Respondent”) to treat payments made to the Appellant by her employer in January 2021 but relating to earnings for December 2020, as taxable in the year 2020.
2. On agreement of the parties, this appeal is determined without an oral hearing in accordance with section 949U of the Taxes Consolidation Act, 1997 (“TCA 1997”).

Facts

3. The Appellant commenced a new employment on 21 December 2020. Her employer pays their employees on the 10th of every month and so the Appellant missed the cut off for payments in December 2020. Arrears in the amount €2,615.69 were paid to the Appellant in January 2021, but relating to earnings in December 2020. Her employer treated the arrears payment under the PAYE system as earnings taxable in the year 2021. The Appellant sought to have the arrears payment taxed in the year 2020. Such treatment, if applicable would result in a tax refund to the Appellant, as she had no other taxable earnings in 2020.

4. The Respondent refused to alter the PAYE deductions as applied by the Appellant's employer on the basis that income is taxed on the receipts basis in the year it is received. The Appellant appealed this decision to the Commission by notice of appeal received on 2 March 2021.

Legislation

5. Section 112 of the TCA 1997 provides:

(1)Income tax under Schedule E [shall be charged for each year of assessment] on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

(2)(a)[In this section], "emoluments" means anything assessable to income tax under Schedule E.

(b)Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of subsection (1):

(i)if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii)if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

(3)Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment.

Appellant's Submissions

6. The Appellant submitted that she returned to work in Ireland from living in the UK in December 2020. Her new employer paid her in January 2021, for work carried out in December 2020. The Appellant furnished a letter from her employer, which confirms that the Appellant missed the cut-off for the December 2020 payroll and was paid an arrears amount of €2,615.69 in January 2021, which related to earnings in December 2020.

7. The Appellant submitted that the calculation of tax for her December 2020 and January 2021 earnings should be computed separately as they related to separate tax years. The Appellant further submitted that “*all references to “tax year” for tax rates and bands, tax credits, allowances and earnings, refers to the calendar year*”, as per the Revenue website and “all Revenue documentation”.
8. The Appellant stated that she had not earned any income in Ireland in 2020 prior to her earnings in December 2020 and that the charge to tax on these earnings is disproportionate and unfair.

Respondent’s Submissions

9. The Respondent submitted that section 112 TCA 1997 stipulates that income is taxed on the basis of when it is received, not when it is earned. Therefore, the Appellant’s December 2020 earnings were correctly taxed in January 2021.
10. The Respondent further submitted that following queries raised to them by the Appellant, she was advised the following;

On 23 February 2021:

“With the introduction of PAYE Modernisation it is no longer possible to revert an arrears payment to a previous year. If a customer receives a payment (backdated pay, overtime, arrears etc.) in one year but it refers to another year there is no way to put this payment into a previous year. All customers are now on the receipts basis of taxation and it is impossible for any payments to be made in arrears”.

On 29 March 2021:

“The year of receipt of payment is the year of taxation. Your employer submitted your pay on the 07/01/21 in relation to the pay dates of the 08/01/21 so it is 2021 that is the relevant tax year”.

11. The Respondent also referred to a previous determination issued by the Tax Appeals Commission (48TACD2019) and in particular paragraph 16 of that determination which states;

‘I am satisfied that there is no inherent ambiguity in the statutory wording used per Section 112 TCA 1997 as amended. It is clear from subsection 3 that the legislature intended that tax payments, collected under the provisions of chapter 4, Part 42 TCA 1997 (PAYE system), for tax year 2018 onwards, “shall be computed on the amount of emoluments paid to the person in the year of assessment”. This means that notwithstanding that the Appellant earned certain income, subject to PAYE, in 2018, it falls to be taxed in the year that is paid to her i.e. 2019’.

The Respondent submitted that the same line of reasoning is applicable to this appeal and that despite the fact that the Appellant earned the income in the year 2020, it must be taxed in the year it was paid i.e. 2021.

Analysis and findings

12. In appeals before the Tax Appeals Commission, the burden of proof rests with the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at paragraph 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'

13. The Commissioner is satisfied that there is no inherent ambiguity in the statutory wording used per section 112 TCA 1997 as amended. It is clear from section 112(3) that the legislature intended that tax payments, collected under the provisions of Chapter 4, Part 42 TCA 1997 (PAYE system), for tax year 2018 onwards, "shall be computed on the amount of emoluments paid to the person in the year of assessment". This means that notwithstanding that the Appellant earned certain income, subject to PAYE, in 2020, it falls to be taxed in the year that it was paid i.e. 2021.

14. The statutory provision is clear. In her submissions to the Commission, the Appellant expressed her sense of unfairness at the tax treatment afforded to her earnings in 2020. The Commissioner has sympathy with the Appellant's view. However, the jurisdiction of the Commission is confined to interpreting tax legislation, ensuring that the correct charge to tax has been made and ensuring that the correct tax is paid. There is no dispute that the arrears payment was made in January 2021. Hence, under the statutory provisions it must be taxed in 2021. The Commission does not have the remit to determine whether a legislative provision causes unfairness against individual taxpayers based on their particular payment dates. The Commission has considered the legislation and it is clear that from the year 2018 any payment received is taxable in the year of receipt.

Determination

15. The Commissioner determines that the tax treatment of the tax deducted in 2021 was correct. The Commissioner determines that by virtue of section 112 of the TCA 1997 the payment had to be taxed in 2021, the year of receipt. Therefore, the appeal is denied. The Commissioner wishes to express understanding for the situation the Appellant finds herself in and she was correct to pursue an appeal to have clarity. However, the legislative provisions are clear and cannot be overturned in this appeal.

16. The appeal is 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.

A handwritten signature in blue ink, appearing to read 'Marie-Claire Maney', with a stylized flourish at the end.

Marie-Claire Maney
Chairperson
Appeal Commissioner
1st November 2021