



104TACD2022

Between

[REDACTED]

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

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 2020 but relating to earnings for December 2019, as taxable in the year 2019.
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”).

**Background**

3. The Appellant registered for Income Tax on the 26<sup>th</sup> December 2010 as she was in receipt of both rental and PAYE income.
4. During the periods 14<sup>th</sup> September 2011 to 12<sup>th</sup> November 2018, the Appellant was an employee and her income was subject to PAYE. Under an agreement dated 23<sup>rd</sup> December 2019, the Appellant was to be paid an amount of €50,000 as a termination payment by her former employer. This payment was to be paid within 28 days of the date of the agreement but was not paid until the 24<sup>th</sup> February 2020.

5. The termination payment was processed as €38,349.90 non-taxable income and the balance, €11,659.10 as taxable income. The breakdown of this amount is not in dispute between the Appellant and the Respondent.
6. The Appellant filed her 2019 Income Tax return via ROS (the Respondent's online system which allows taxpayers to manage and file their tax returns) on 10<sup>th</sup> December 2020. On that return, she included the taxable element of the termination payment received by her on the 24<sup>th</sup> February 2020.
7. The 2019 tax return was processed as per the self-assessment system and refund of €2,186.38 arose which consisted of a PAYE refund of €1,548.38 and a refund of preliminary tax paid for 2019 of €638.
8. The Appellant filed her 2020 Income Tax return on ROS on the 19<sup>th</sup> November 2021. This income Tax return did not include the amount of payment received by her from her former employer on the 24<sup>th</sup> February 2020 as the Appellant had returned that one year prior in her 2019 Income Tax return.
9. During November 2021, the Respondent reviewed the tax returns submitted by the Appellant for the tax years 2019 and 2020 and formed the view that they were incorrect as the taxable element of the termination payment was wrongly included in the 2019 tax return when they understood it should have been returned in the 2020 tax return.
10. On the 1<sup>st</sup> December 2021, the Respondent issued corrected notices of assessment for both the tax years 2019 and 2020 which had the effect of removing the taxable element of the termination payment from the 2019 tax return and including that income on the 2020 tax return. The result of these changes was that a net liability of €727.70 arose for the tax year 2019.

### **Legislation and Guidelines**

11. The following legislation is relevant to this appeal.

#### Section 112 of the TCA 1997

*(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.*

## **Submissions**

### *Appellant*

12. The Appellant submitted that her former employer, for unknown reasons, delayed putting through the agreed settlement amount within an agreed timeframe of 30 days and the effect of this was that rather than it being put through the 2019 payroll it was put through the 2020 payroll.
13. The Appellant was of the view that the legal interactions which ensued between her and her former employer regarding the termination of her employment was subject to the agreement that the termination payment would be put through the 2019 payroll. She stated that as part of the negotiations, while not set out in the final signed agreement, a conditional term of her accepting the offer was an understanding that the payment would be treated as being received and taxable in the 2019 tax year. The Appellant submitted that as the agreement was concluded and the paperwork completed in 2019 that this made

the termination payment a 2019 cost/income stream and as such it should be taxable in 2019.

14. The Appellant stated that the effect of removing the taxable element of the termination payment from her 2019 Income Tax assessment resulted in her not having any reckonable PRSI contributions credited in that period. She stated that as her only 2019 income was rental income and job seeker's benefit that neither of these income streams qualified as reckonable PRSI contributions and this could have an impact on her qualifying for future social assistance benefits such as the contributory old age pension.

*Respondent*

15. The Respondent advised that they and the Appellant had engaged in correspondence regarding the Appellant's receipt of the termination payment in 2020 and the subsequent submission of her 2019 and 2020 income tax returns. The Respondent advised that the Appellant had some difficulty in sourcing the documentation to vouch her figures as her previous employer had gone into liquidation in December 2019.
16. The Respondent advised that owing to the difficulty with the Appellant sourcing figures, they provided her with figures from their records which confirmed that the termination payment was paid on the 24<sup>th</sup> February 2020. They further advised the Appellant that as the payment was received on the 24<sup>th</sup> February 2020, it had been wrongly returned by her in her 2019 Income Tax return when it should have been returned in her 2020 Income Tax return and as such they would issue corrected assessments for 2019 and 2020 to reflect this position. This was explained to the Appellant by telephone and email on the 13<sup>th</sup> October 2021.
17. The Respondent submitted under the provisions of section 112(3) TCA 1997, as the termination payment was received by the Appellant in 2020, it was subject to the provisions of Chapter 4 of Part 42 TCA 1997, and as such was to be included as emoluments and taxed in the year which it was paid, which was 2020.
18. The Respondent submitted that the inclusion of the word "shall" in section 112(3) TCA 1997 does not allow for any discretion in the implementation of the section and as such neither they nor the Commission could deviate from that strict wording.
19. The Respondent submitted that the termination payment was wrongly recorded in the 2019 assessment and correctly recorded in the 2020 assessment and as such the revised assessments for 2019 and 2020 which they issued should stand.

## **Evidence Presented to the Commission**

20. The Respondent produced a copy of the Appellant's wage slip which showed the amount of the termination payment, split between the taxable and non-taxable element of the payment and a payment date of 24<sup>th</sup> February 2020.

21. The Appellant produced a copy of the legal agreement which governed the terms and conditions of the termination payment, which was dated the 23<sup>rd</sup> December 2019 and was signed by both the Appellant and a representative of her former employer. The agreement included the following terms:

*"...Subject to the terms of this agreement, the Company will make, and the Employee will accept, a settlement and termination payment in the gross sum of €50,000 (fifty thousand euro) ("the Termination Payment") to be paid within 28 days of the date hereof...*

*...The Termination Payment will be subject to deductions for taxes and other appropriate statutory deductions. It will be made in a tax-efficient manner but without additional cost to the Company. The Employee hereby indemnifies the Company in respect of any and all claims and costs (including legal costs) arising from the tax treatment of the Termination Payment insofar as such claims and costs arise from any inaccuracy or omission from any confirmation or information provided to the Company by the Employee whether before or after the date of this agreement..."*

*[Signed and witnessed by both parties].*

## **Material Facts**

22. The Commissioner finds the following material facts:-

- 22.1. The Appellant concluded an agreement with her former employer on the 23<sup>rd</sup> December 2019 regarding the termination of her employment with them.
- 22.2. That agreement provided that payment was to be made to the Appellant within 28 days of the agreement being concluded.
- 22.3. The termination payment was made by the Appellant's employer to her on the 24<sup>th</sup> February 2020 and this was evidenced by the payslip provided by the Respondent.
- 22.4. The Appellant recorded the taxable element of the termination payment in her 2019 Income Tax return and did not return it in her 2020 Income Tax return.
- 22.5. The Respondent amended the Appellant's Income Tax returns for 2019 and 2020 by removing the termination payment from the 2019 Income Tax return and including it in the 2020 Income Tax return.

- 22.6. The effect of this amendment was that revised notices of assessment issued by the Respondent to the Appellant for both the 2019 and 2020 Income Tax years which calculated a net Income Tax charge due the Appellant in the sum of €727.70.

### Analysis

23. 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'*

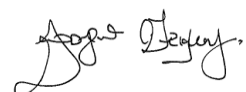
24. The Commissioner is satisfied that there is no inherent ambiguity in the statutory wording used per section 112 TCA 1997 as amended. It is clear from section 112(3) that the legislature intended that tax payments, collected under the provisions of Chapter 4, Part 42 TCA 1997 (PAYE system), for tax 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 2019, it falls to be taxed in the year that it was paid i.e. 2020.
25. In her submissions to the Commission, the Appellant stated that she was unsure why her employer delayed making the payment to her which had the effect of her receiving the payment in 2020 rather than 2019. Leaving aside the fact that the delay was most likely caused by her former employer going into liquidation, the termination agreement which the Appellant signed was dated the 23<sup>rd</sup> December 2019 and it provided for the payment to be made to the Appellant within 28 days of the signing of the agreement. Factoring in the Christmas holidays, the Commissioner is of the view that it was unreasonable for the Appellant to have any expectation for the payment to have been made before the 31<sup>st</sup> December that year, which would have been required under the legislation for the sum to have been taxable in the tax year 2019.
26. The Appellant in her submissions stated that she was disappointed to discover that the effect of her having no reckonable income for PRSI purposes in 2019 could result in future social welfare benefits being affected. It would be remiss of the Commissioner not to inform the Appellant that this concern may be unfounded given that she may already have

contributions credited for that year as a result of her being in receipt of job seekers benefit. In the alternative, the Appellant may elect to pay voluntary contributions which would keep her contribution record intact by completing a form "VC1" which is available on the gov.ie website and/or contacting her local Department of Social Protection who will assist the Appellant with any queries she may have.

27. In her submissions to the Commission, the Appellant expressed her sense of unfairness at the tax treatment afforded to her earnings in 2019. 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 on the 24<sup>th</sup> February 2020. Hence, under the statutory provisions it must be taxed in 2020. 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**

28. The Commissioner determines that the tax treatment of the tax deducted in 2020 was correct. The Commissioner determines that by virtue of section 112 of the TCA 1997 the payment had to be taxed in 2020, the year of receipt. Therefore, the appeal is denied and the assessments are upheld. The Commissioner wishes to express an 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.
29. 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.



Andrew Feighery  
Appeal Commissioner  
14 June 2022