



107TACD2022

Between

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ████████████████████ (“the Appellants”) in relation to a P21 Statement of Liability issued by the Revenue Commissioners (“the Respondent”) for the year 2019.
2. The Appellants are jointly assessed for the purposes of Income tax. The Appellants are appealing an underpayment of the Universal Social Charge (“USC”) in the sum of €4,800, which became apparent on the encashment of a private pension belonging to the second named Appellant.
3. On 25 November 2020, a P21 Statement of Liability issued and on 16 December 2020, the Appellants duly appealed to the Commission. The hearing of the appeal took place on Thursday, 9 June 2022. The Commissioner heard evidence and submissions from the first named Appellant and submissions from the Respondent.

Background

4. In October 2020, the Appellants made the decision to encash a private pension policy of the second named Appellant. Prior to doing so, they furnished numerous documents to the pension provider, so that an accurate indication of the encashment value of the policy could be provided to them. The Appellants' Tax Credit Certificate ("TCC") for the period 19 August 2019 to 31 December 2019, issued by the Respondent, was among the documents provided to the pension provider, in order that the surrender value of the policy could be calculated.
5. The Appellants submit that the information provided by the Respondent in the TCC was incorrect, as the Respondent did not collect the correct USC payment for the period. This resulted in not only a liability for outstanding USC for the year, but it also affected the encashment value of the policy and the net lump sum value of the policy. The Appellants submit that it made sense to encash the policy, as it would only have provided a pension of just under €70 per month. They state that they chose to take a lump sum payment, in order to clear residual debt and that the decision to encash was based on the net lump sum value calculated, once all taxes were deducted.
6. On 25 October 2019, the second named Appellant contacted the Respondent to query why USC was not being collected by the Respondent and was told that in relation to the second named Appellant, there was an underpayment of USC in the sum of €4,800. The Appellants submit that the situation is unjust and unfair. The Appellants argue that they relied on an incorrect document furnished by the Respondent, namely the TCC, to their detriment and that they have been disadvantaged as a result. They state that this is a "*well known position in common law*" and that the Respondent has failed in its duty of care.
7. The Respondent states that the Appellants appear not to disagree with the amount of the underpayment, but that they find the underpayment unfair in circumstances where it was their understanding that all relevant taxes were paid. The Respondent argues that its record shows that a TCC for 2019 issued to the Appellants with the following statement: "*Please notify your Revenue office if it is likely that your income will in fact exceed €13,000.00*". However, no contact was made by the Appellants to correct the record, which then resulted in an underpayment on the income of the second named Appellant for the year.
8. The Respondent argues that it is the responsibility of the Appellants to bring any error in the documentation to the Respondent's attention and that "*it is a fundamental principle of the Irish system of taxation that the taxpayer remains responsible for their own tax affairs,*

but also because they were requested in writing to let Revenue know if this documentation contained any errors”.

9. In addition, the Respondent submits that the Appellants’ position is that they are in effect arguing the principles of equitable estoppel, which is outside the remit of the jurisdiction of the Commission.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:-

11. Section 531AM of the Taxes Consolidation Act 1997, Charge to Universal Social Charge, contains the main charging provisions in relation to USC and provides:-

(1) With effect from 1 January 2011, there shall be charged, levied and paid, in accordance with the provisions of this Part, a tax to be known as ‘universal social charge’ in respect of the income specified in paragraphs (a) and (b) of the Table to this subsection.

(2) Universal social charge shall not be payable for a tax year by an individual who proves to the satisfaction of the Revenue Commissioners that his or her aggregate income for the tax year does not exceed €13,000.00.

Submissions

Appellant

12. The first named Appellant gave the following evidence:

- (i) The second named Appellant retired last year and she had a small private contributory pension which came to maturity. They discussed encashing the pension and contacted the pension provider to understand the payment options and figures. Reference was made to documentation submitted to the pension provider, including a TCC of the Respondent dated 19 August 2019.
- (ii) Reference was made to letter of 15 October 2019, from the pension provider setting out the surrender value of the policy of €76,036.92 and a breakdown of the benefits in the form of a tax free lump sum and a taxed lump sum to be paid on 24 October 2019.
- (iii) It was not an easy decision for the second named Appellant to encash the pension. However, based on the calculations they received, it made sense to encash the

pension. It then came to light that the TCC did not reflect the correct USC. He stated that the second named Appellant contacted the Respondent in order to query why a USC was not being deducted in respect of her income. He queried if she had not contacted the Respondent, would this have continued, with the ongoing liability accruing. He stated that by contacting the Respondent, they disadvantaged themselves.

- (iv) He mentioned that they had spent considerable time considering their financial circumstances and what documents were required to be sent to the pension provider. He argued that the situation is unfair and unjust and had the correct figures been provided to the pension provider, they would have made different decisions around the encashment of the pension and the lump sum value available to them. He stated that they relied to their detriment on a document provided to them by the Respondent, and equity and fairness should prevail.
- (v) Under cross examination, he stated that it is not credible to state that they were warned on the TCC about income in excess of €13,000 and that taxpayers only read the figures in these types of documents. He also did not accept that as the Irish tax system is based on self-assessment, that the onus was on him to inform the Respondent as to his income. He stated that they have always paid their taxes and had assumed, as they were both over 65, that USC was no longer payable.

Respondent

13. The Respondent made the following submissions:-

- (i) There is no argument in relation to the facts and figures only an argument as to unfairness, which is not within the jurisdiction of the Commission.
- (ii) When the TCC issued there was a warning on the face of it, to notify your Revenue office if it is likely that your income will in fact exceed €13,000.00. No contact was made with the Respondent prior to October 2019. There is no error on the part of the Respondent and it is incumbent on a taxpayer to ensure that the details of a TCC or any other document relating to the payment of tax is correct.
- (iii) In an effort to reduce any hardship with repayment of the liability to USC, it offered to permit the Appellants to repay the sum due over a longer period. However, the Appellants have declined to accept this, on the basis that the liability arises due to an error of the Respondent.

Material Facts

14. The Commissioner makes the following material findings of fact:-

- (i) The Appellants are taxed in accordance with the PAYE system under Schedule E.
- (ii) The Appellants encashed a pension in October 2019 and chose to take a lump sum payment.
- (iii) The Appellants relied on the TCC of the Respondent to calculate the net lump sum value of encashing the second named Appellant's pension.

Analysis

15. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

"The burden of proof in this appeal 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".

16. The Appellants are dissatisfied with the manner in which the underpayment has arisen in relation to their tax affairs and that this has had an effect on the encashment value of the second named Appellant's lump sum pension payment. In fact, the Appellants argue that they relied on the Respondent's TCC to their detriment and would have acted differently had they been taxed accordingly. They state that reliance on the statement of one person to another person's detriment is "*a well known position at common law*".

17. The Commissioner has noted the Appellants' argument that the situation they find themselves in is unfair and unjust. However, the scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be.

18. In the *Lee* decision, Murray J. considered the dicta of Charlton J. in *Menolly Holmes* at para.52

“..in analysing this decision it seems to me to be important to observe that while Charlton J. speaks at points of powers to “strike down” the assessment, I do not understand the argument as advanced by the taxpayer in that case to have suggested that the supervisory jurisdiction vested in the High Court over statutory bodies had been transferred in the case of assessments to tax to the Appeal Commissioners. Whatever the correct analysis of the jurisdiction of the latter, there is no question of it extending to enable the Commissioners to issue declarations of invalidity of any kind. That is a function vested in the Courts”.

19. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. While, the Commissioner fully understands the sense of dissatisfaction and frustration with the Respondent, which was eloquently expressed by the first named Appellant at the hearing, the Commissioner is not empowered to consider whether the unfairness of the situation or otherwise, could operate so as to remove the liability out of the ambit of USC on a legitimate expectation or estoppel basis.

20. With that in mind, the Commissioner notes the Appellants do not challenge the amount of liability to USC due and owing, just that no liability should arise given the circumstances of their appeal. Consequently, in the absence of any arguments (aside from the unfairness argument), as to the amount of tax payable, the Commissioner is satisfied that the liability as to USC should stand.

21. The Commissioner notes the Respondent is offering to permit the repayment of the liability to USC over a longer period. The Commissioner supports this approach and suggests that the Respondent continue to engage with the Appellants in this regard.

Determination

22. As such and for the reasons set out above, the Commissioner determines that the Appellants have failed in their appeal and have not succeeded in showing that the tax is not payable.

23. The Commissioner appreciates this decision will be disappointing for the Appellants. However, the Commissioner is charged with ensuring that the Appellants pay the correct tax. The Appellants were correct to check to see whether their legal rights were correctly applied.

24. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason 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.



Claire Millrine
Appeal Commissioner
22nd June 2022