AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

111TACD2022

Between

[redacted]

Appellants

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against PAYE/USC Balancing Statements ("P21's") for the tax years 2015, 2016 and 2017 which were raised by the Revenue Commissioners (hereinafter "the Respondent) on the 21st May 2018.

2. The oral hearing took place before the Commissioner on the 20th June 2022. The Appellants were not represented by a Tax Agent but were articulate and well-prepared.

3. The amount of tax at issue is €11,421.75.

Background

4. The Appellants are a married couple. On the 8th December 2014, Mr [redacted] ("the First Appellant") commenced employment with [redacted].

5. The Appellant's spouse, Ms [redacted] ("the Second Appellant") was employed by [redacted] for the years under appeal. The First and Second Appellants had no other income aside from PAYE earnings from their employments and maternity/paternity payments

received from the Department of Social Protection. They were jointly assessed for tax purposes and as all their income was taxable under Schedule E, they were not required to submit tax returns for the tax years 2015, 2016 or 2017.

6. The First Appellant gave his new employer's a copy of his Form P45 (the then form which was given to an employee when they ceased employment with their employer. This Form P45 is no longer issued since PAYE Modernisation [see below] was implemented) when he commenced employment with his new employer in line with that employer's operational manual so that they could set him up on the payroll system. The Respondent denied being notified of the First Appellant's employment until the 5th March 2018. Central to the dispute between the Appellants and the Respondent is whether the Respondent was notified of the commencement of the First Appellant's employment with [redacted] and whether they failed to update their system to reflect the First Appellant's new employment.

7. As the Respondent claimed they had not been notified of the First Appellant's new employment, they assumed that he had no employment and hence no taxable income for the tax years 2015 to 2017 inclusive. Since they were of the view the First Appellant had no taxable income, they allocated his tax credits to and increased the standard band rate for the Second named Appellant. In addition, the Respondent increased the Second Appellant's tax credits by the home carer allowance. The home carer allowance is only available to a married couple where only one of the spouses work and there is a child or children of the couple. The effect of allocating these additional tax credits and increased band to the Second Appellant was that she paid less PAYE on her employment income than she would have done had the tax credit and bands not been allocated to her.

8. On the 5th March 2018, the Respondent became aware of the First Appellant's employment with [redacted] from updates to their system arising from remedial works associated with the introduction of the "PAYE Modernisation System" (which was subsequently introduced on the 1st January 2019). PAYE Modernisation allows for real time communication between employers and the Respondent that relates to salary and wage payments and associated tax issues, such as an employee's tax credits and the commencement or cessation of an employee's employment.

9. When the Respondent's system updated, it identified that the First Appellant had PAYE earnings from his employment with [redacted] in each of the tax years 2015 to 2017 inclusive and it generated P21's for those years. Those P21's revealed that an underpayment of tax had occurred in each of the years 2015 to 2017 inclusive in the sums of €3,557.36, €3,313.97, €4,550.42 respectively. The cause of the underpayments was primarily that the First Appellant's employer had allocated him his ordinary tax credits and tax band some

of which had been allocated to the Second Appellant for those years. The P21's issued to the First and Second Appellants on the 21st May 2018.

10. A Notice of Appeal dated 20th June 2018 in respect to the tax liabilities for the tax years 2015 to 2017 inclusive was filed with the Commission.

Legislation

11. The legislation relevant to this appeal is as follows:

S.I. No. 559/2001 – Income Tax (Employments) (Consolidated) Regulations 2001

7. (1) (a) Every employer who makes a payment of emoluments to or on behalf of an employee at a rate exceeding a rate equivalent to a rate of €8 a week, or, in the case of an employee with other employment, €2 per week, shall send to the Revenue Commissioners a notification of his or her name and address and of the fact that he or she is paying such emoluments.

10. (1) The amount of the tax credits and standard rate cut-off point appropriate to an employee for any year shall be determined by the inspector who for that purpose may have regard to any of the following matters, namely —

(a) the reliefs from income tax to which the employee is entitled for the year in which the amount of the tax credits and standard rate cut-off point is determined, so far as the employee's title to those reliefs has been established at the time of the determination, but, where the amount of the tax credits and standard rate cut-off point is determined before the beginning of the year for which it is to have effect, the inspector shall disregard any such relief from income tax if he or she is not satisfied that the employee will be entitled to it for that year;

(b) the emoluments of the employee;

…

11. (1) After the inspector has determined the amount of the tax credits and standard rate cut-off point for any year in accordance with Regulation 10, he or she shall send notice of his or her determination to the employee.

(2) The inspector shall send to the employer of the employee either a certificate (in these Regulations referred to as a "certificate of tax credits and standard rate cut-off point"), or a tax deduction card incorporating a certificate

of tax credits and standard rate cut-off point, certifying the amount of the tax credits and standard rate cut-off point of the employee as determined by the inspector.

12. (1) If the employee is aggrieved by the inspector's determination, he or she may give notice in writing of his or her objection to the inspector, stating the grounds of the objection, within 21 days of the date on which the determination was notified to him or her.

(2) On receipt of the notice of objection, the inspector may amend his or her determination by agreement with the employee, and in default of such agreement the employee, on giving notice in writing to the inspector, may appeal to the Appeal Commissioners.

14. Where a determination of the inspector or of the Appeal Commissioners is amended after a certificate of tax credits and standard rate cut-off point or tax deduction card has been issued, the inspector shall send to the employer, and the employer shall thereafter use, such new certificate of tax credits and standard rate cut-off point or tax deduction card, as may be appropriate.

20. (1) If an employer ceases to employ an employee in respect of whom a certificate of tax credits and standard rate cut-off point or tax deduction card has been issued to him or her, he or she shall immediately send to the inspector by whom the certificate of tax credits and standard rate cut-off point or tax deduction card was issued a certificate on the prescribed form containing the following particulars:

(a) the name of the employee;

(b) the date on which the employment ceased;

(c) the week or income tax month in respect of which the last payment of emoluments was recorded on the tax deduction card and the cumulative emoluments at the date of that payment;

and any other particulars as to tax credits and standard rate cut-off point, tax or any other matters which are indicated by such form as being required to be entered thereon.

(2) The employer shall make on the prescribed form 2 copies of the certificate required by paragraph (1) of this Regulation and shall deliver them to the employee on the date the employment ceases.

(3) Immediately on commencing his or her next employment the employee shall deliver to the new employer the 2 copies of the certificate prepared by the former employer and, subject to the provisions of paragraph (4) of this Regulation, the following provisions shall have effect:

(a) the new employer shall insert on one copy of the certificate the address of the employee, the date of which the new employment commenced, and the manner in which payment of emoluments is made to the employee, that is to say, weekly, monthly or as the case may be, and shall immediately send that copy to the inspector by whom certificates of tax credits and standard rate cut-off point or tax deduction cards are ordinarily issued to the employer;

(b) the inspector shall send to the new employer a certificate of tax credits and standard rate cut-off point or tax deduction card, as appropriate, for the employee;

(c) pending the receipt of the certificate of tax credits and standard rate cut-off point or tax deduction card from the inspector, the new employer shall prepare a temporary tax deduction form and, in relation to payments of emoluments by him or her, record on it —

(i) the date of payment,

(ii) the gross amount of emoluments, and

(iii) as respects each week or income tax month (as may be appropriate), the tax credits and standard rate cut-off point for Week 1 or Month 1 as specified on the copies of the certificate prepared by the former employer,

and having regard to the standard rate cut-off point as specified on the copies of the certificate prepared by the former employer, the new employer shall deduct tax on the aggregate amount of the emoluments for the week or income tax month (as may be appropriate) by reference to the tax due at the standard rate of tax and the higher rate of tax (as may be appropriate) on such emoluments reduced by the tax credits for Week 1 or Month 1 as specified on the copies of the certificate prepared by the former employer;

(d) when the new employer has received a certificate of tax credits and standard rate cut-off point or tax deduction card from the inspector, he or she shall, having ascertained the aggregate of the amounts of the emoluments and the aggregate of the amounts of the tax by reference to the relevant entries on the copies of the certificate prepared by the former employer and on the temporary tax deduction form (if any), record on the tax deduction card or such other record as may be authorised those aggregates, and those aggregates shall be deemed respectively to be the cumulative emoluments paid and the cumulative tax deducted by him or her.

(4) (a) Where the 2 copies of the certificate prepared by the former employer show that the last payment of emoluments was in the year preceding that in which the new employment commences, the new employer shall comply with the provisions of paragraph (3) of this Regulation with the modification that he or she shall not record, or have regard to, the cumulative emoluments and cumulative tax shown on the copies of the certificate.

(b) Where the 2 copies of the certificate prepared by the former employer show that the last payment of emoluments was in a year earlier than the year preceding that in which the new employment commences, the new employer shall comply with the provisions of subparagraph (a) of paragraph (3) of this Regulation but deduct tax from each payment of emoluments made by him or her to the employee, and keep records on the emergency card referred to in Regulation 22, as if those payments had been payments to which paragraph (2) of that Regulation applied.

(5) If the new employer ceases to employ the employee before he or she receives a certificate of tax credits and standard rate cut-off point or tax deduction card from the inspector, he or she shall comply with the provisions of paragraphs (1) and (2) of this Regulation as if a certificate of tax credits and standard rate cut-off point or tax deduction card in respect of the employee had been issued to him or her by the inspector, but —

(a) for the purposes of subparagraph (c) of paragraph (1) of this Regulation, the cumulative emoluments shall be taken to be the aggregate of the cumulative emoluments shown on the copies of the

certificate prepared by the former employer and the gross emoluments paid by the new employer; and

(b) where, as respects the certificate on the prescribed form referred to in that paragraph (1), entry of particulars of the cumulative tax is required to be made thereon, that tax shall be taken for the purposes of that entry to be the aggregate of the cumulative tax shown on those copies and any tax deducted by the new employer.

(6) If the employee objects to the disclosure to the new employer of his or her cumulative emoluments, he or she may deliver the 2 copies of the certificate prepared by the former employer to the inspector before he or she commences his or her new employment, and the inspector shall send in respect of the employee to the new employer a certificate of tax credits and standard rate cut-off point or tax deduction card not stating the employee's cumulative tax credits and standard rate cut-off point or cumulative emoluments and direct that Regulation 19 shall apply to all payments of emoluments which the new employer makes to or on behalf of the employee.

28. (1) Within 14 days from the end of every income tax month the employer shall remit to the Collector-General all amounts of tax which he or she was liable under these Regulations to deduct from emoluments paid by him or her during that income tax month, reduced by any amounts which he or she was liable under these Regulations to repay during that income tax month.

(2) On payment of tax, the Collector-General shall furnish the employer concerned with a receipt in respect of that payment which shall consist of whichever of the following the Collector-General considers appropriate, namely —

(a) a separate receipt on the prescribed form in respect of each such payment, or

(b) a receipt on the prescribed form in respect of all such payments that have been made within a period specified in the receipt.

(3) If the amount which the employer is liable to remit to the Collector-General under paragraph (1) of this Regulation exceeds the amount actually deducted by the employer from emoluments paid during the relevant income tax month, the Revenue Commissioners, on being satisfied that the employer took reasonable care to comply with the provisions of these Regulations and that

the under-deduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the employee, and where they so direct, the employer shall not be liable to remit the amount of the excess to the Collector-General.

(4) If the amount which the employer is liable to remit to the Collector-General under paragraph (1) of this Regulation exceeds the amount actually deducted by the employer from emoluments paid during the relevant income tax month and the Revenue Commissioners are of the opinion that an employee has received his or her emoluments knowing that the employer has wilfully failed to deduct therefrom the amount of tax which the employer was liable to deduct under these Regulations, the Revenue Commissioners may direct that the amount of the excess shall be recovered from the employee, and where they so direct, the employer shall not be liable to remit the amount of the excess to the Collector-General.

(5) If a difference arises between the employer and the employee as to whether the employer has deducted tax, or having regard to Regulation 25 is deemed to have deducted tax, from emoluments paid to or on behalf of the employee, or as to the amount of the tax that has been so deducted or is so deemed to have been deducted, the matter shall, for the purposes of ascertaining the amount of any tax to be recovered from the employee under paragraph (3) or (4) of this Regulation, be determined by the Appeal Commissioners.

(6) If the total of the amounts which the employer was liable to repay during any income tax month exceeds the total of the amounts which the employer was liable to deduct during that income tax month, the employer shall be entitled to deduct the excess from any amount which he or she is subsequently liable to remit to the Collector-General under paragraph (1) of this Regulation or to recover it from the Revenue Commissioners.

(7) A determination under paragraph (5) of this Regulation may be made by one Appeal Commissioner.

35. (1) Nothing in these Regulations shall prevent an assessment under Schedule E being made on a person in respect of his or her emoluments (income assessed to tax) for any year.

37. The inspector shall, in any case where he or she does not propose to make an assessment on an employee with respect to whom tax was deducted

during a year, send to the employee, as soon as possible after the end of the year, a statement of his or her liability for the year and showing how it is proposed to deal with any overpayment or underpayment of tax.

39. (1) If the tax payable under the assessment exceeds the total net tax deducted from the employee's emoluments during the year, the inspector, instead of taking the excess into account in determining the appropriate amount of tax credits and standard rate cut-off point for a subsequent year, may require the employee to remit it to the Collector-General, and, where the inspector so requires, the employee shall remit the excess accordingly on demand made by the Collector-General.

(2) For the purposes of determining the amount of any such excess, any necessary adjustment shall be made to the total net tax in respect of any tax overpaid or remaining unpaid for any year.

40. (1) Any tax which is to be remitted to the Collector-General by any employee may be recovered in the manner provided by the Income Tax Acts.

Section 112 TCA 1997

(1) *Income tax under Schedule E shall be charged annually 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*.

Submissions

Appellant

12. The Appellants stated that they received inconsistent views on the reasons underpinning the underpayments of PAYE for the tax years 2015 to 2017 from different personnel within the Respondent and they found this very frustrating.

13. The Appellants stated that all set up documentation was furnished to the Respondent by the First Appellant's employer. The Appellants submitted that as the First Appellant was paying PAYE for the years 2015 to 2017, that this was inconsistent with the Respondent's contention that they regarded him as having no PAYE income for those years.

14. The Appellants stated that while the Second Appellant noticed that the pay from her employment increased over the years, 2014 to 2015 in particular, (the effect of the additional tax credits and band being allocated to her would have caused an increase to her net pay), that the Second Appellant attributed this to incremental pay increases in her employment and as such she was not "on notice" of the pay increases being caused by a reallocation of credits and allowances.

15. The Appellants submitted that if an underpayment occurred it stemmed from an error made by the Respondent and not by the Appellants or the First Appellant's employers. They stated that the First Appellant had contacted the Respondents and offered to furnish them with any information it may require to assist them. They further advised that the First Appellant had provided records from ROS (the Respondent's online system which allows communication between taxpayers and the Respondent in addition to the filing of returns) and followed up by telephone multiple times without any satisfactory response as to the reasons for the underpayment of PAYE.

16. The Appellants submitted that they had not authorised the Respondent to allocate the First Appellant's tax credits and standard rate bands to the Second named Appellant, and as this had been done without their consent, they should not be held accountable for tax arising from those adjustments.

17. The Appellants submitted that as a notification of tax credits and standard rate cut-off band certificate (P2C) was sent by the Respondent to the First Appellant's employer in 2015 this was evidence that they had been notified of his employment with them. They also stated that the First Appellant's P60 (employee's yearly summary of pay and tax deducted) for 2014 included earnings from both his previous and new employer and the Respondent would have been notified of this on the yearly P35 return (the employer's yearly return to the Respondent of their staff's salary and tax deducted).

18. The Appellants stated that Regulation 7 of S.I. 559/2001 indicates that it is the responsibility of the employer and not the employee to inform the Respondent of an employee's details. They submitted that Regulation 20 of that statutory instrument sets out the obligations of an employee upon a change of employment and that the First Appellant had complied with these requirements. They further submitted that as Regulation 20 which also sets out the responsibilities of the employer on the provision of the information by the employee had been complied with, then it was the fault of the Respondent that an incorrect tax treatment had been applied, that this had given rise to the underpayments and that they as the Appellants should not be held liable for payment of the sums.

19. Further or in the alternative, the Appellants submitted that as they had no role or intent in the facts which gave rise to the underpayment and as they had acted in good faith at all relevant times, and it was the First Appellant's employers who had failed to fulfil its statutory responsibilities or to apply a reasonable standard of care to the registration of the First Appellant's employment with the Respondent, then the First Appellant's employer as the wrong doer should be held accountable and held liable for payment of the underpaid tax.

Respondent

20. The Respondent stated that although the First Appellant's employer alleged that they registered his employment with them in 2014 through ROS and that they had received a P2C from them in 2015, their records indicated otherwise. The Respondent advised that they contacted the ROS helpdesk on the 12th October 2018 and were advised by them that there was no record of the First Appellant's employer having registered the First Appellant's employment in 2014 and that no P2C's had issued to the First Appellant or his (new) employer for the tax years 2014, 2015, 2016 or 2017.

21. The Respondent advised that the Second Appellant had received P2C's for each of the tax years 2015, 2016 and 2017 and that these certificates had detailed her tax credits for each of the applicable tax years. They stated that these P2C's would have shown the full married person's credit being allocated to the Second Appellant in addition to the home carer allowance and increased standard rate band cut-off. The Respondent further advised that no P2C would have issued to the First Appellant for those years as his employment had not been notified to them and as such he was considered unemployed throughout the period 2015 to 2017.

22. The Respondent advised that the re-allocation of transferrable tax credits and bands between jointly assessed persons is one of many automatic system processes which do not require the advance approval of the taxpayer and which are in place to alleviate potential hardship which may arise, for example, on the loss of one spouse's employment. They advised that the Second Appellant would have been notified whenever an adjustment was made to her tax credits and if she was unhappy with any adjustment therein, she should have contacted them to discuss the grievance or appealed the matter to the Commission.

23. The Respondent advised that when an employer submitted details of an employee's employment on the now defunct Form P35 and they had not received a P2C in respect of that employee, internally it generated what was referred to as a "Christmas day employment" and no further action was taken by the Respondent in respect of that entry

on the return. The Respondent offered this explanation to the Appellants' submission that they had been notified of the First Appellant's employment but failed to act.

24. The Respondent submitted that they disputed the Appellants' submissions that they had not been treated in a proper and fair manner and that conflicting explanations in respect of the underpayments had been offered to the Appellants. They advised that when the query was submitted by the Appellants, that they fully engaged with the Appellants and advised them of how and why the underpayments had arisen.

25. In summation, the Respondent submitted that the Appellants had received payments in each of the years 2015 to 2017 on which the correct amount of income tax was not deducted, that this income tax was now due and the assessments should be upheld by the Commission.

Evidence Presented to the Commission

26. The following evidence was presented to the Commission:

26.1 A copy of an amended tax credit certificate for the First Appellant for the tax year 2013. This certificate was dated the 25th July 2013.

26.2 Copies of the P21's sent to the First and Second Appellants for the tax years 2015 to 2017 inclusive. All three of these documents were dated 21st May 2018.

26.3 A copy of an amended tax credit certificate for the First Appellant for the tax year 2018 dated 11th June 2018.

26.4 An email from the First Appellant's employer dated 20th June 2018 which contained the following narrative:

> "*Payroll received P45 details for you in 2014, which were then registered via ROS (as are all P45's that we receive from new employees). Revenue would have a record of the P45 issued by your previous employer, plus the registration of your employment with* [redacted] *through ROS… They keep telling you a different story each time you talk to them, which would make me think that they don't know what they have done to your tax file, or are trying to cover up an error which they made. It is true that it is down to an individual to monitor their own tax certificates, as they are issued to everyone each year as well as to the individual's employer. But Revenue definitely should not have allocated your tax credits to your wife without you specifically requesting them to do so. You need to challenge them on that point, as that really does not make sense*".

26.5 Annexed to that email was a document entitled – "*Evidence for Revenue and [redacted] payroll*". It stated:

> "*Please find attached P2C uploads from Revenue for 2015, 2016 and 2018… As you can see by the snip below (I searched your PPSN in our P2C records for ROS for 2017 and* ***they did not forward*** *us a new cert for 2017, in this case you would copy forward the tax cert from the previous budget changes for USC, like reducing the percentage of USC and increasing USC cut-off points). They did the same for 2016, just your 2015 cert was sent to us. "*
>
> *[Attachment – Copy of 2018 tax cert details].*

26.6 Copies of correspondence between the Appellants and the Respondent. The correspondence was dated between 6th June 2018 and 27th June 2018. The correspondence discussed the underpayments for the years 2015 to 2017 and advised:

(a) The reason for the underpayments of tax for the years 2015 to 2017 was because the First Appellant's employer never notified the Respondent of the commencement of his employment in late 2014.

(b) As the First Appellant's employer had not registered his employment, they had not received a P2C for any of the years 2015 to 2017 inclusive and as such they had been running the payroll incorrectly and not working off the Respondent's instruction.

(c) As there was only one employment registered on the system they allocated the Second Appellant with a portion of the First Appellant's tax band, gave her the First Appellant's unused tax credits and also gave her the home carer benefit. They advised that the home carer credit was only granted where there was a child dependent and only one of the spouse's was in employment. They advised that P2C's had issued to the Second Appellant for the tax years 2015 to 2017 which notified her of the changes to her tax credits and cut-off band.

26.7 Copies of the First Appellant's P60 from his employer for the years ended 2015, 2016 and 2017. In addition to showing the First Appellant's pay, tax and USC / PRSI payments, these P60's showed tax credits for each of the years 2015 to 2017 of €3,300 and a standard rate tax band of €33,800 for each of those years.

26.8 A series of emails between the First Appellant and his employer. These emails were dated between 10th and 12th December 2014 and the exchange of

correspondence confirmed that the First Appellant had provided his employer's payroll department with a copy of his P45 when he commenced employment with them and that they had received same.

Material Facts

27. The Commissioner finds the following material facts:-

27.1 The First Appellant commenced employment with his new employer on the 8th December 2014.

27.2 The First and Second Appellants were jointly assessed for tax purposes for the tax years 2015 to 2017 inclusive.

27.3 The First Appellant gave his new employer a copy of his Form P45 shortly after he commenced employment with them.

27.4 That new employer stated that they sent a copy of the Form P45 to the Respondent, that the employment was properly registered and a Forms P2C was received by them from the Respondent.

27.5 Forms P2C issued to the Second Appellant for the tax year 2015 to 2017 inclusive. These forms notified the Second Appellant that her tax credits and standard rate cut-off band had been increased.

27.6 The Respondent claims that it was not notified of the First Appellant's employment with [redacted] until the 5th March 2018.

27.7 Notices of assessment issued by the Respondent to the Appellants on the 21st May 2018. These assessments showed that the Appellants had underpaid income tax for the years 2015 to 2017 in the sum of €11,421.75.

Analysis

28. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

> "*This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable*."

29. While not central to the appeal and outside the jurisdiction of the Commission, the Commissioner finds the Appellants' submissions that the Respondent did not properly engage with them and gave inconsistent views on the reasons underpinning the tax

assessments to be without merit. This is confirmed following a review of the exchange of correspondence between the Appellants and the Respondent detailed at 26.6 (c) above, which is neither incomplete nor inconsistent.

30. Furthermore, the Commissioner is of the view that the Respondent was not notified of the commencement of the First Appellant's employment with [redacted] until the 5th March 2018. The Commissioner accepts the fact that the First Appellant properly provided his employer with a copy of his Form P45 when he commenced his employment with them but is of the view that it was the First Appellant's employer who failed to properly register his employment with the Respondent. This is confirmed by virtue of the First Appellant's employer's inconsistent email of the 20th June 2018, the failure to produce any evidence of a P2C (the document they provided was a computer printout and not in official format) and the fact that the P60s provided by them for each of the tax years 2015 to 2017 inclusive contained identical entries for tax credits and tax bands.

31. While it is unfortunate that the First Appellant's employer did not properly register his employment with the Respondent, as the Appellants received the benefit of the additional tax credits and rate band, it is they that are liable for the tax underpayments and payment of that liability. This is confirmed by section 112 TCA 1997 which provides that income tax "*shall be charged …on any person… having or exercising an office or employment…*"

32. The Appellant's were unfortunate that the Respondent was not notified of the commencement of the First Appellant's new employment in 2014 by either his current or previous employer. The previous employer had an obligation under the regulations to inform the Respondent that the First Appellant was not in their employ anymore and yet apparently failed to do so. Equally the First Appellant's new employer was responsible to have informed the Respondent of the commencement of the First Appellant's employment with them but also failed to so do. It is anticipated that the advances to the tax code brought about by the implementation of PAYE modernisation will cure such defects in the future.

33. While the errors are unfortunate, that does not alter the assessments which issued by the Respondent seeking the underpayment of tax for the years 2015 to 2017. The Appellants submitted that as they had no role or intent in the facts which gave rise to the underpayments, that as they had acted in good faith at all relevant times, and it was the First Appellant's employers who had failed to fulfil their statutory responsibilities or to apply a reasonable standard of reasonable care to the cessation/registration of the First Appellant's employment with the Respondents then it ought to be the First Appellant's employers and not they who should be responsible for the underpaid tax.

34. Aside from there being nothing in the TCA 1997 or the PAYE regulations to accommodate this request and it falling foul of section 112 TCA 1997, the Appellants' contention that they were effectively innocent bystanders to the events surrounding the issues which gave rise to the underpayment of tax, is not an accurate reflection of the true position.

35. The Commissioner notes that the correspondence exhibited by the Appellants failed to include copies of the P2C's issued to the Second Appellant's for the years 2015 to 2017. The Respondent stated that it issued these forms in compliance with section 11 (1) of S.I. 559/2001 for all relevant years and this was not disputed by the Appellants. On those forms, the Second Appellant was advised of the changes to both her tax credits and tax bands. While, section 12 (1) of that statutory instrument provides that the Second Appellant could have objected to the amendments to her P2C, it is of note that she did not and the issue of the tax credits and bands was only raised when the Appellants were notified of the tax underpayments in 2018.

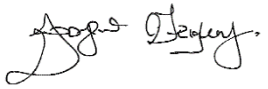
36. As the burden of proof has not been discharged to satisfy the Commissioner that the Appellants are not liable for payment of the taxes arising from the Notices of Assessment for the years 2015 to 2017 in the sum off €11,421.75, the Commissioner determines that the assessment must stand and the appeal is dismissed.

Determination

37. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant tax is not payable.

38. It is understandable that there will be disappointment with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the position.

39. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. 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
29th June 2022