



124TACD2022

Between:

██████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against a PAYE/USC Balancing Statement (P21) (hereinafter "P21") for 2018 which was raised by the Revenue Commissioners (hereinafter the "Respondent") on 27 February 2019.
2. The amount of tax at issue is €692.57.

Background

3. Mr ██████████ (hereinafter the "Appellant") is a retired gentleman who became eligible for, and began receiving, the State Contributory Pension in March 2018. The Appellant is jointly assessed to tax with his wife. During 2018 the Appellant was also in receipt of a pension from his former employment along with income from other employments.
4. On 23 March 2018 the Appellant attended at the Respondent's offices in Cork and requested that his tax affairs be amended such that sufficient tax would be deducted from

his pension income to ensure that he would not be left with a liability on the income which he received from the State Contributory Pension at the end of 2018 and for subsequent years.

5. The Respondent's representative at the Cork office confirmed to the Appellant that his request would be implemented and, on receipt of the next payslip from his work pension, the Appellant noted that the amount of income tax and Universal Social Charge which he was paying had increased. As a result the Appellant was satisfied that his request had been implemented by the Respondent.
6. On 27 February 2019 the Respondent issued a P21 to the Appellant which indicated an underpayment of €692.57. The underpayment amount was subsequently reduced to €586.97 when a claim for medical expenses by the Appellant was applied and a fresh P21 was issued by the Respondent to the Appellant dated 13 March 2019 to reflect same.
7. A Notice of Appeal was lodged by the Appellant dated 12 April 2019 appealing the P21 for 2018 issued on 13 March 2019.
8. On 6 April 2020 the Commission wrote to the Parties indicating that it intended to adjudicate the within appeal without a hearing pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997"). The said correspondence gave the Parties 21 days to request that the appeal be adjudicated by way of an oral hearing.
9. On 15 April 2020 an Appeals Commissioner determined the appeal and a written determination was issued to the Parties by email. The Appellant did not receive the determination issued.
10. Having received the determination of 15 April 2020 the Respondent proceeded to collect the underpayment for 2018 by way of reduction of the Appellant's tax credits for the tax year 2020.
11. On 29 April 2020 the Commission received a letter by post from the Appellant requesting that the appeal be adjudicated by way of an oral hearing. The Appellant subsequently indicated that this letter had been posted on 14 April 2020.
12. On 25 April 2022 the Appellant called and emailed the Commission seeking information on the within appeal.
13. The Commission replied to the Appellant by email dated 25 April 2022 informing him of the above events.

14. On 26 April 2022 the Appellant emailed the Commission requesting that the within appeal be heard in a public hearing.
15. On 12 May 2022 the Commission wrote to the Appellant apologising and acknowledging that the determination which issued on 15 April 2020 had been issued prior to waiting for the expiry of the statutory deadline of 21 days for the Appellant's response to the notice of intention to adjudicate the appeal without an oral hearing pursuant to section 949U of the TCA1997. As a result the determination issued on 15 April 2020 was treated as being void *ab initio* and the within appeal was assign to a new Commissioner.
16. The oral hearing took place before the Commissioner on 14 July 2022. The Appellant appeared on his own behalf and was accompanied by his wife. He was not represented by a Tax Agent or other representative. Officers on behalf of the Respondent also attended. The Appellant was articulate and well-prepared.
17. At the oral hearing the Commissioner again apologised to the Appellant for the error made in issuing the determination of 15 April 2020, acknowledging that this should not have occurred. The Commissioner emphasised that she had not had sight of the determination of 15 April 2020 and that the within appeal and oral hearing was being conducted without reference to that determination.

Legislation and Guidelines

18. The legislation relevant to the within appeal is as follows:

- Section 126 of the TCA1997 see **Appendix 1**

Submissions

Appellant's Submissions

19. The Appellant gave evidence to the Commissioner at the oral hearing. He stated that he had been a compliant taxpayer for 50 years and that as soon as he began receiving the State Contributory Pension he was aware that tax would need to be paid on it. He stated that as a result he attended at the Respondent's Cork office and requested that his tax affairs be put in a position such that he would not be left with a liability at the end of 2018 or subsequent years as a result of his becoming eligible for receipt of additional income in the form of the State Contributory Pension.
20. He stated that he was assured by the person with whom he was dealing that his tax affairs would be amended such that he would not be left with a liability at the end of 2018. He stated that on receipt of his next pay from his work pension he noted that the amount of

tax being deducted had increased from €79.47 to €161.13 and he was therefore reassured that his instructions to the Respondent's Cork Office had been implemented and that he would have no liability at the end of 2018.

21. The Appellant stated that on receipt of his P21 which issued on 27 February 2019 he was upset and distressed when it stated that he had underpaid his tax liability for 2018. He stated that he had been a compliant taxpayer for 50 years and that he had at all times been of the view that it was better to be owed money by the Respondent than to owe money to the Respondent. This, he stressed, was extremely important to him.
22. The Appellant stated that he took exception to the Respondent's explanation in its Statement of Case that the reason that he had been taxed on a "Week 1" basis rather than on a "cumulative" basis was a concern that the collect the outstanding amount from him in one payment would have resulted in hardship. He emphasised that his instructions to the Respondent had been that he did not wish to have an outstanding liability at the end of 2018 and that it was reasonable to expect that the Respondent would implement his instructions.
23. In addition the Appellant took exception to the manner in which his tax credits were reduced by the Respondent in 2020 as a mechanism for collecting the underpayment without an option being given to him to make a lump sum payment to the Respondent. The Appellant stated that he felt he had been misdirected, mislead and misinformed by the Respondent in contravention of their own Charter.
24. The Appellant confirmed to the Commissioner that he accepted that the amount of tax contained in the P21s issued to him by the Respondent was due and owing and that his issue related to the treatment of his tax affairs by the Respondent's Cork office by not implementing his instructions which resulted in him having a liability to the Respondent at the end of 2018.
25. The Appellant stated that prior to lodging the within appeal he had contacted the Financial Ombudsman who informed him that because he had not at that time exhausted his appeal remedies with the Respondent they were unable to assist him. As a result, he stated, he lodged the within appeal with the Commission.

Respondent's Submissions

26. The Respondent confirmed that the Appellant had attended at their Cork office on 23 March 2018 and that on that date a figure was input into their system for the amount of State Contributory Pension which the Appellant was in receipt of. From that date the Respondent taxed the Appellant on a "Week 1" basis. The Respondent's officer indicated

that no narrative had been entered into their system on that date as to what had been discussed, or what advice had been given, during the Appellant's attendance at their Cork office.

27. The Respondent submitted that on 30 March 2018 they received information from the Department of Employment Affairs and Social Protection of an increase in the amount of the State Contributory Pension which the Appellant would be in receipt of and their system was updated to reflect this increase. The Respondent's officer apologised to the Appellant for the manner in which his 2018 tax affairs had been handled by the Respondent.
28. On foot of a query by the Commissioner the Respondent's officer confirmed that no late penalties or interest had been applied to the Appellant's tax affairs for 2018. When asked by the Commissioner why the underpayment had been collected from the Appellant in 2020 by way of reduction of his tax credits, the Respondent's officer submitted that this had been done to reduce the impact to the Appellant of any hardship which might have occurred if the entire underpayment had been sought in one lump sum payment. The officer apologised if any impression had been given that the Appellant was unable to make a lump sum payment and indicated that this was not the intention of the Respondent.

Material Facts

29. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:
- i. The Appellant attended at the Respondent's Cork Offices in March 2018 and instructed that he wished to have his tax affairs amended such that he would not have a liability at the end of 2018 or subsequent years as a result of being in receipt of the State Contributory Pension;
 - ii. On 23 March 2018 the Respondent's agent at the Cork office amended the system on a "Week 1" basis on foot of the Appellant's instruction;
 - iii. The amendment of the Respondent's system did not reflect the Appellant's instructions and resulted in an underpayment by the Appellant for 2018.

Analysis

30. As with all appeals before the Commission 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.”

31. The Commissioner has considered the submissions made on behalf of both Parties in the appeal.
32. The Appellant accepts that the underpayment contained in the P21 issued to him by the Respondent on 27 February 2019 was due and owing by him and does not dispute that the amount of underpayment was payable. Therefore the Commissioner finds that the Appellant has not established that the underpayment amount the subject matter of the within appeal was not payable.
33. The Commissioner again acknowledges and apologises on behalf of the Commission for the error made in issuing the determination of 15 April 2020 which should not have issued. The Commissioner confirms that she has not had sight of that determination prior to the issue of the within determination and that the determination of 15 April 2020 has had no bearing or influence on the within determination.
34. At the oral hearing the Commissioner explained to the Appellant that Appeals Commissioners’ jurisdiction is limited to determination whether the appealed tax was payable as set out in statute.
35. The scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (hereinafter “*Lee*”), *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.
36. Most recently Murray J. in *Lee* held as follows:

“From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge.”¹

37. The functions of Commissioners’ are set out in section 6(2) by the Finance (Tax Appeals) Act 2015 as follows:

“(a) deciding whether or not to accept an appeal,

¹ At paragraph 64

(b) deciding whether to declare, under section 949N(3) (inserted by section 34) of the Act of 1997, that a refusal to accept an appeal is final,

(c) deciding on the appropriate procedure to be adopted in relation to an adjudication of an appeal,

(d) giving directions to the parties to an appeal,

(e) fixing dates, times and places for the hearing of appeals,

(f) hearing an appeal where the Commissioners have decided that a hearing is the appropriate method of adjudicating on the appeal,

(g) determining appeals,

(h) providing written determinations,

(i) publishing determinations,

(j) stating and signing cases stated for the opinion of the High Court,

(k) establishing and maintaining efficient and effective systems and procedures so as to secure the processing, adjudication and determination of appeals in a timely and effective manner, and

(l) doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants.”

38. The Commissioner acknowledges the Appellant’s annoyance and distress at the manner in which the Respondent implemented his instruction in March 2018. The Commissioner also acknowledges the Respondent’s acceptance that the Appellant’s instruction was implemented in such a manner that resulted in the Appellant being left in a position whereby there was an underpayment of his taxes for 2018.

39. The Commissioner acknowledges and accepts that the Appellant seeks to be a compliant taxpayer and that it is not in his character to allow an underpayment of taxes to build up. Finally the Commissioner acknowledges the Respondent's apology to the Appellant for the events which occurred.

Determination

40. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

41. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949 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 TCA1997.



Clare O'Driscoll
Appeal Commissioner
19 July 2022

APPENDIX 1

Section 126 TCA1997 - Tax treatment of certain benefits payable under Social Welfare Acts.

(1)In this section—

“the Acts” means the Social Welfare Acts;

“the Act of 2005” means the Social Welfare Consolidation Act 2005.

(2)(a)This subsection shall apply to the following benefits payable under the Acts—

(i)widow’s (contributory) pension,

(ii)orphan’s (contributory) allowance,

(iii)retirement pension, and

(iv)old age (contributory) pension.

(b)Payments of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.

(2A)(a)This subsection shall apply to the following benefits payable on or after 1 July 2013 under the Acts—

(i)maternity benefit,

(ii)adoptive benefit,

(iii)health and safety benefit,

(iv)paternity benefit, and

(v)parent’s benefit.

(b)Amounts to be paid on foot of the benefits to which this subsection applies shall be deemed—

(i)to be profits or gains arising or accruing from an employment (and accordingly tax under Schedule E shall be charged on every person to whom any such benefit is payable in respect of amounts to be paid on foot of such benefits, and tax so chargeable shall be computed under section 112(1)), and

(ii)to be emoluments to which Chapter 4 of Part 42 applies.

(2B)Notwithstanding the provisions of section 112(1), where an increase in the amount of a pension to which section 112, 113, 117 or 157, as the case may be, of the Social Welfare Consolidation Act 2005 applies is paid in respect of a qualified adult (within the meaning of the Acts), that increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act.

(3)(a)This subsection shall apply to the following benefits payable under the Acts—

(i)illness benefit,

(ii)jobseeker's benefit,

(iia)jobseeker's benefit (self-employed),

(iii)injury benefit which is comprised in occupational injuries benefit, and

(iv)pay-related benefit.

(b)Amounts to be paid on foot of the benefits to which this subsection applies (other than amounts so payable in respect of a qualified child within the meaning of section 2(3) of the Social Welfare Consolidation Act 2005 shall be deemed—

(i)to be profits or gains arising or accruing from an employment (and accordingly tax under Schedule E shall be charged on every person to whom any such benefit is payable in respect of amounts to be paid on foot of such benefits, and tax so chargeable shall be computed under section 112(1)), and

(ii)except in the case of amounts so payable in respect of jobseeker's benefit (self-employed), to be emoluments to which Chapter 4 of Part 42 is applied by section 984.

(c)(i)In this paragraph "short-time employment" has the same meaning as it has for the purposes of the Acts.

(ii)Notwithstanding paragraphs (a) and (b) and the Finance Act 1992 (Commencement of Section 15) (Unemployment Benefit and Pay-Related Benefit) Order 1994 (S.I. No. 19 of 1994), paragraph (b) shall not apply in relation to jobseeker's benefit or jobseeker's benefit (self-employed) paid or payable, to a person employed in short-time employment.

(4)(a)In this subsection, "income tax week" means one of the successive periods of 7 days in a year of assessment beginning on the 1st day of that year, or on any 7th day after that day, and the last day of a year of assessment (or the last 2 days of a year of assessment ending in a leap year) shall be taken as included in the last income tax week of that year of assessment.

(b)Notwithstanding subsection (3), the first €13 of the aggregate of the amounts of jobseeker's benefit or jobseeker's benefit (self-employed) payable to a person in respect of one or more days of unemployment comprised in any income tax week (other than an amount so payable in respect of a qualified child within the meaning of section 2(3)(a) of the Social Welfare (Consolidation) Act, 1993) shall be disregarded for the purposes of the Income Tax Acts.

(6)(a)Subsection (3) shall come into operation on such day or days as may be fixed for that purpose by order or orders of the Minister for Finance, either generally or with reference to any particular benefit to which that subsection applies, or with reference to any category of person in receipt of any particular benefit to which that subsection applies, and different days may be so fixed for different benefits or categories of persons in receipt of benefits.

(b)Where an order is proposed to be made under this subsection, a draft of the order shall be laid before Dáil Éireann, and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

“(6A)A payment which is——

(a)described in column (1) of the Table to this section,

(b)paid on the basis specified in column (2) of that Table, and

(c)made by the Minister for Employment Affairs and Social Protection to an individual on or after 1 January 2018,

shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

(6B)A payment which——

(a)is described in column (1) of the Table to this section,

(b)is paid on the basis specified in column (2) of that Table, and

(c)was made by the Minister for Employment Affairs and Social Protection to an individual before 1 January 2018,

shall be treated as if it was exempt from income tax in the year of assessment to which it relates and shall not be reckoned in computing income for the purposes of the Income Tax Acts.”

<i>Description of payment (1)</i>	<i>Basis on which payment is made (2)</i>
<i>Basic supplementary welfare allowance</i>	<i>Section 189 of the Act of 2005</i>
<i>Back to education allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to education allowance’</i>
<i>Back to work enterprise allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to work enterprise allowance’</i>
<i>Back to school clothing and footwear allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to school clothing and footwear allowance’</i>
<i>Carer’s support grant</i>	<i>Section 225 of the Act of 2005</i>
<i>Constant attendance allowance</i>	<i>Section 78 of the Act of 2005</i>
<i>Death benefit – funeral expenses</i>	<i>Section 84 of the Act of 2005</i>
<i>Death benefit – orphans</i>	<i>Section 83 of the Act of 2005</i>
<i>Direct provision allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Direct provision allowance’</i>
<i>Disability allowance</i>	<i>Section 210 of the Act of 2005</i>
<i>Disablement gratuity</i>	<i>Section 75(8) of the Act of 2005</i>

<i>Domiciliary care allowance</i>	<i>Section 186F of the Act of 2005</i>
<i>Exceptional needs payment</i>	<i>Section 201 of the Act of 2005</i>
<i>Farm assist</i>	<i>Section 214 of the Act of 2005</i>
<i>Fuel allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Fuel allowance'</i>
<i>Guardian's payment (contributory)</i>	<i>Section 130 of the Act of 2005</i>
<i>Guardian's payment (non-contributory)</i>	<i>Section 168 of the Act of 2005</i>
<i>Household benefit package</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Household benefit package'</i>
<i>Humanitarian assistance payment</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Humanitarian assistance payment'</i>
<i>Jobseeker's allowance</i>	<i>Section 141 of the Act of 2005</i>
<i>Jobseeker's transitional payment</i>	<i>Section 148A of the Act of 2005</i>
<i>Medical care</i>	<i>Section 86 of the Act of 2005</i>
<i>Part-time job incentive scheme</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Part-time job incentive scheme'</i>
<i>Rent allowance</i>	<i>Section 23 of the Housing (Private Rented Dwellings) Act 1982</i>
<i>Supplementary welfare allowance</i>	<i>Section 198 of the Act of 2005</i>
<i>Telephone support allowance</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Telephone support allowance'</i>
<i>Training support grant</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Training support grant'</i>
<i>Urgent needs payment (other than the payments referred to in subsection (3)(a)(iib))</i>	<i>Section 202 of the Act of 2005</i>
<i>Widowed or surviving civil partner grant</i>	<i>Section 137 of the Act of 2005</i>
<i>Working family payment</i>	<i>Section 228 of the Act of 2005</i>
<i>Youth employment support scheme</i>	<i>A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Youth employment support scheme'</i>