



12TACD2022

Between

THE APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

The Appeal and Preliminary Matters

1. The Appellant appealed to the Tax Appeals Commission (“the Commission”) on 16th December 2020 in respect of the amount of tax of €1530.69 raised by the Revenue Commissioners (“the Respondent”). The appeal by the Appellant relates to amended P21 assessments to income tax for the years 2016 and 2018, raised by the Respondent on the 17th of November 2020. The assessments relate to the Appellant and the Appellant’s spouse. The Appellant and his spouse are jointly assessed to tax pursuant to section 1017 of the Taxes Consolidation Act 1997, defined as the TCA 1997. The Appellant has always been tax compliant and from the documentation supplied is an exemplary citizen.
2. The Respondent raised an initial objection that the Appellant’s complaint was not an appealable matter but related to the management of his tax affairs and the appeal should be refused. The Commissioner rejects that submission. The Appellant’s appeal relates to the charge to tax and the amount he has been asked to pay. The role of the Commission is to determine if a charge should have been raised and if so, was it the correct amount.
3. The Commission notes that the Appellant also had a complaint about his treatment and the documentation supplied to the Commission does not include any reference to the internal/external review process. The Commission is not

aware if the Respondent informed the Appellant of his right to the internal and external review process in relation to treatment. That is a matter for the Respondent. Complaints procedures can only be effective if they are promoted. But this is outside the remit of the Commission.

4. The Commissioner has read the documentation supplied by the Appellant and wishes to express condolences for the family bereavement and for the health issues generally pertaining to the Appellant and his general extended family.
5. This appeal is determined in accordance with section 949U TCA 1997 with the consent of the parties.

Background Information

6. The Appellant is a person entitled to a contributory pension pursuant to section 108 of the Social Welfare Consolidation Act 2005, having made the contributions and satisfied the conditions set forth in section 109 of that Act. The Commissioner does not need to consider any further matters relating to the pension itself, as that fact is accepted by all parties.
7. The Appellant has claimed and been granted that pension for the years under appeal. The amount of the pension increased pursuant to section 112(1) of the Social Welfare Consolidation Act because the Appellant's spouse is a "*qualified adult*" within the meaning of that Act.
8. On 12th November 2020, the Appellant submitted a medical claim (known as a Med 1 claim) for the 2019 tax year. Concurrently, the Appellant submitted details of interest received and deposit interest retention tax, (known as DIRT) deducted for a Credit Union deposit account for the tax years 2016, 2017, 2018 and 2019. The Appellant understood that he may receive a tax refund for the medical claim and for the DIRT paid.
9. Whilst processing the claims, the Respondent conducted a review of the Appellant's income and tax credits for the relevant years. Arising from this review, the Respondent issued P21 assessments on 17th November 2020 for the relevant tax years. The Appellant is appealing the assessments for the 2016 and 2018 tax years. These assessments indicated an underpayment of income tax of €1,346 and €184 respectively.
10. The underpayment of €1,346 in 2016 arose due to a reduction in the Appellant's PAYE tax credit from €3,300 to €1,650. The Appellant had previously received a Tax Credit Certificate showing a PAYE credit of €3,300. The Appellant has

queried the reduction in this tax credit. The Appellant queried why his statement of liability in November 2020 included a tax credit of €1650, as opposed to the previous tax credit of €3,300. The Appellant maintained that he paid tax on his pension, as did his spouse and so the tax credit should be €3,300.

11. The Appellant received pension payments amounting to €23,370 and €24,325 for the years 2016 and 2018 and he has been assessed to income tax on same. He submits that any increase in his pension that is attributable to his spouse should be taxed as his wife's income, with the benefit of the PAYE tax credit.
12. The underpayment of €184 in 2018 arose due to a revision made by the Respondent to the Appellant's contributory pension income from €23,864 to €24,325, an increase of €461. The Appellant again queried this change in his statement dated 17th November 2020. This was due to the Department of Social Protection increase to €24,235.20, namely an increase of €461.30. The Appellant queried why the adjustment was not made by the Respondent at 25th March 2019 (4 months past the tax year 2018), similar to an adjustment made in 2017.
13. The Respondent submits that the increase in the Appellant's contributory pension pursuant to section 112(1) of the Act, is deemed, pursuant to section 126 (2B) TCA 1997, to be the Appellant's income for tax purposes, for the years under appeal.
14. On 17th November 2020, the Appellant received PAYE Balancing statements (P21's) for the tax years 2016 and 2018, indicating underpayments of income tax of €1,346 and €184 respectively.
15. Having received the PAYE Balancing Statements (P21's) for the tax years 2016 and 2018, the Appellant duly submitted his appeal to the Commission. The appeal was received on 16th December 2020.

Relevant legislation

16. The applicable statutory provision of the Act is section 112(1), which provides as follows:

“Subject to this Part, the weekly rate of old age (contributory) pension State pension (contributory) shall be increased by the amount set out in column (3) of Part 1 of Schedule 2 for any period during which the beneficiary has a qualified adult, subject to the restriction that a beneficiary shall not be entitled for the same period to an increase of

*pension under this subsection in respect of more than one person.”
(emphasis added)*

17. Section 126(2) of the TCA 1997, as amended, provides for the taxation of certain benefits payable under the Social Welfare Acts, and states:-

“(a) This section shall apply to the following benefits payable under the Acts-

- (i) widow’s (contributory) pension,*
- (ii) orphan’s (contributory) pension*
- (iii) retirement pension, and*
- (iv) old age (contributory) pension.*

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

18. A new subsection 126(2B) was inserted by the Finance (No. 2) Act 2013 and took effect from 1 January 2014, providing that:-

“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.” (emphasis added)

19. Section 472(4) of the TCA 1997 provides that:-

“Where, for any year of assessment, a claimant proves that his or her total income for the year consists in whole or in part of emoluments (including, in a case where the claimant is a married person assessed to tax in accordance with section 1017, or a civil partner assessed to tax in accordance with section 1031C, any emoluments of the claimant’s spouse or civil partner deemed to be income of the claimant by that section for the purposes referred to in that section) the claimant shall be entitled to a tax credit (to be known as “the employee tax credit”) of –

- (a) Where the emoluments (but not including, in the case where the claimant is a married person or a civil partner so assessed, the emoluments, if any, of the claimant’s spouse or civil partner) arise to the claimant, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650, and*
- (b) Where, in a case where the claimant is a married person or a civil partner so assessed, the emoluments arise to the claimant’s*

spouse or civil partner, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650.”

Submissions

Appellant

20. The Appellant submits that following writing to the Respondent on 12th November 2020 when he submitted his Med 1 form for 2019 and in relation to the refund of DIRT, he received a PAYE/USC statement of Liability for tax year 2016, 4 years later on 17th Nov 2020 when a €15 (DIRT) impact on his 2016 earnings resulted in him owing Revenue €1346.17. This was due to the tax credit being allowed of only €1650.
21. The Appellant also received a PAYE/USC statement of liability for tax year 2018 some 2 years later on 17th November 2020 and 7th December 2020 when a €5 input on his 2018 earnings resulted in him owing the Respondent €184.52 because they increased the State pension by €461.30 to €24 325 (€461.30 @ 40% €184.52) even though he had completed the end of year statement (P21) for 2018. This was issued by the Respondent on 16th April 2019, some three and a half months after 2018 relating to his State pension at €23864.10.
22. The Appellant submitted that on examination of his State earnings on his tax certificates between 2016/2019, the amount between Social Welfare and the Respondent is never correct. It is always undercharged in the following way -2016 - €381.50, 2017 - €393.60, 2018 - €470.80, and 2019 - €850.80 and then €356.80. The Appellant further submitted that in 2017, 2018 and 2019, he had made deductions paid by LAYA on his Med 1 form in total €1462 which at 20% would be €292. The Appellant submitted that there was an unfairness in saving €80 week to protect his private health insurance.

Respondent

23. The Respondent submitted that the Appellant is married with himself and his wife being jointly assessed for tax. The couple's income consists of his occupational pensions and his contributory state pension, in respect of which they receive the appropriate additional payment by virtue of the Appellant being a qualified adult.
24. The Appellant contacted the Respondent on 11th November 2020 with a query concerning whether he was entitled to relief in respect of DIRT paid for the years 2016 – 2018. Reviews of those years were conducted as a result, with a review

of the year 2019 being triggered following a health expenses claim submitted by him on 17th November 2020. The reviews disclosed that the couple were in receipt of a PAYE credit in respect of the Appellant's spouse and the Employee Tax Credit is governed by section 472 TCA 1997.

25. However, as the only income attributable to the Appellant's spouse was that of a qualified adult in respect of her husband's contributory state pension, there was no entitlement to this credit in accordance with section 126(2B) TCA 1997, which states the income is to be 'treated for all purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary'. The Respondent therefore submitted that the income cannot give rise to an entitlement to the credit under section 472. The withdrawal of the credit resulted in a total underpayment to tax for the years 2016 and 2018 of €1530.69.
26. The Respondent submitted that the underpayment arose with respect to the Appellant and it would code it forward over a number of years so as to minimise any hardship repaying the liability might cause to the couple.

Analysis and Findings

27. In relation to the underpayment of €184 in 2018, the Appellant does not argue that the Department of Social protection (DSP) amount of €24,325.40 is incorrect or that it has been incorrectly taxed. The Appellant seeks an explanation why the correcting adjustment was not made more promptly and submits that this is an unexplained error on the part of both the Respondent and the Department of Social Protection.
28. The Respondent did not address the matter of the adjustment made to the Department of Social Protection income in the 2018 assessment, in their Statement of Case. However, in a submission made to the Commission, pursuant to section 949L TCA 1997, the Respondent submitted that the handling of this adjustment "concerns Revenue's management of his tax affairs, which is not an appealable matter".
29. The Commission considered the objections made by the Respondent to the acceptance of the appeal and the Appellant's response to these objections. The P21 Statements under appeal include the guidance note advising the taxpayer of their right to "Appeal this Statement to the Tax Appeals Commission (an independent statutory body)". The Appellant's grounds for appeal clearly indicates that the taxpayer's entitlement to the PAYE credit is in dispute and the Appellant is seeking an independent review of the decision made by the

Respondent to deny the PAYE tax credit. On this basis the appeal was accepted for adjudication by the Commission.

30. Notwithstanding this decision to accept the appeal, the Appellant has not argued that he disagrees with the amount of the Department of Social Protection income or with the taxation treatment. He is seeking an explanation from the Respondent as to how the error and delayed correction(s) took place. He also argues that he should not suffer the consequences of these errors. This matter clearly falls within the Revenue's management of tax affairs and such matters are outside the jurisdiction of the Commission. Accordingly, the underpayment of €184 in 2018 cannot be adjudicated upon by the Commission and does not form part of this determination.
31. In relation to the underpayment of €1,346 in 2016 arising from the disallowance of the double PAYE credit of €1,650, previously granted to the Appellant on his 2016 Tax Credit Certificate, the Appellant submits that as he pays tax on his pension and his wife pays tax on her pension, they should both be entitled to the double PAYE credit in their joint assessment.
32. In response to the points advanced by the Appellant, the Respondent submits that section 126 TCA 1997, as amended, sets out the tax treatment of various payments made under the Social Welfare code, including payments which, subject to certain conditions, can attract an increase in respect of a qualified adult. The State pension (contributory) paid by the Department of Social Protection is a taxable source of income pursuant to the legislation.
33. The Respondent further submits that any increase in that pension in respect of a qualified adult is, for tax purposes, deemed to be the Appellant's income for the years under appeal.
34. The Respondent cited in support of this submission the provisions of section 126 (2B) TCA 1997, which provides that:
- “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.”*
35. Accordingly, the Respondent contends that the PAYE employee tax credit are not available to a qualified adult dependant in respect of that increase. In this

appeal, the Respondent submits that the PAYE tax credit, is only available in respect of the emoluments earned by the Appellant's spouse.

36. The use of the word 'shall' in section 126 (2B) TCA 1997, indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which this deeming provision might be altered, irrespective of any inconsistency in the issuing of the Appellant's Tax Credit Certificates.
37. The Commissioner is therefore satisfied that, pursuant to section 126 (2B) TCA 1997, the increased pension is deemed under the TCA 1997 to be the Appellant's income for the years under appeal.
38. Accordingly, the Respondent has correctly attributed the increased pension to the Appellant and has correctly disallowed the Appellant's wife's PAYE Tax Credit, pursuant to section 472 (4)(b) TCA 1997, on the basis that his spouse did not have any emoluments in 2016.

Determination

39. Pursuant to the wording of section 126 (2B) TCA 1997, and in particular the use of the word "shall", the Commissioner determines that she does not have discretion as regards the application of this provision. As a result, the Commissioner has no alternative but to determine that the increased pension is deemed to be the Appellant's income for the years under appeal. As the Appellant's spouse did not have any emoluments in 2016 she is not entitled to claim the PAYE credit in the 2016 tax year.
40. The Commissioner determines that the Appellant's appeal is unsuccessful and that the P21 Balancing Statements for 2016 indicating an underpayment of €1,346 should stand. The Commissioner appreciates that this determination will be disappointing for the Appellant but there is no discretion afforded to the Commissioner in relation to the statutory provisions. The Appellant was correct in seeking clarity by this appeal process. The Commissioner cannot assist the Appellant due to the statutory constraints.
41. The appeal hereby is determined in accordance with section 949AK (1) TCA 1997. This determination contains full findings of fact and law. Either party can appeal this determination on a point of law only within 21 days of receipt of same.



Appeal Commissioner
Chairperson
12th November 2021