



153TACD2022

Between

██████████

**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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**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 Appellant”) against a Notice of Amended Assessment issued by the Revenue Commissioners (“the Respondent”) on 3 July 2021, in relation to income tax for the year 2019, in the sum of €861.61. This appeal relates to the Respondent’s treatment of rental income received by the Appellant.
2. On 22 July 2021, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

**Background**

3. Since 2003, the Appellant has been in receipt of rental income on a property owned by the Appellant. The rental income received by the Appellant was declared and coded against tax credits through the Pay As You Earn (“PAYE”) system, until the end of 2010. At the

beginning of 2011, the Appellant became a chargeable person for income tax purposes as rental income exceeded the sum of €3,175.

4. The Appellant submits that she was required to register and file income tax returns for 2014, as the income received from renting the property exceeded €5,000 but that subsequently, the rental income was less than €5,000. The Appellant argues that as her Non-PAYE income is less than €5,000, she should not have to pay Universal Social Charge (“USC”) and Pay Related Social Insurance (“PRSI”) on this income. The Appellant in her Notice of Appeal makes reference to the sum of €748.54 PRSI and USC for the years 2015 to 2018 inclusive. The Appellant further argues that as the rental income is less than €5,000, she could have the income coded against PAYE tax credits.
5. On 29 June 2022, the Appellant wrote to the Respondent seeking to resolve the matter having received letter dated 28 April 2022 from the Respondent. On 7 July 2022, following a telephone call with the Appellant’s spouse, the Respondent corresponded with the Appellant stating that an extensive review of the Appellant’s case had been undertaken and the Respondent set out *inter alia* the following:-

*“Having discussed your case with my Line Manager and taken all matters into consideration it has been agreed, without prejudice, that your Income Tax Registration will be ceased with effect from 31<sup>st</sup> December 2020 on a concessional basis.*

*This position is subject to the proviso that if any information comes to light that would indicate that the information submitted was materially incorrect, any necessary assessment/amendment may be made in accordance with Section 959AC Taxes Consolidation Act 1997.*

*Please note that you will now be required to complete and submit a Form 12 for the Tax Years 2021 onwards.*

*Any profit from the renting out of your property will be set against your PAYE Tax Credits which is already being done from 2021 onwards.*

*Going forward please note that if your Non-PAYE source of income, IE Rental Income, exceeds €5,000 in any Tax Year you will be required to re-register for Income Tax and pay any Tax and USC owing on this income through the Self-Assessment system as you have been doing up to now.*

*As you reached the age of 66 in 2021 you are exempt from PRSI on this Income.*

*As stated in the letter that issued from this office dated 20<sup>th</sup> October 2020 please note that I am unable to revise your status for any year up to and including 2019 and also 2020.*

*Returns of Income have been received for all years and assessments issued.*

*I am also unable to issue the refunds of USC and PRSI you requested in your appeal  
I note that the following liabilities of Tax remain outstanding on my records:*

*2019 861.00*

*2020 226.00*

*I have input a stop on my records until 31<sup>st</sup> December 2022 to allow you time to discharge these liabilities and also prevent demands issuing to you up to that date”.*

## **Legislation and Guidelines**

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

7. Section 18 TCA 1997, Schedule D, provides:-

*(1) The Schedule referred to as Schedule D is as follows:*

*1. Tax under this Schedule shall be charged in respect of—*

*(a) the annual profits or gains arising or accruing to—*

*(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,*

*(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere*

*.....*

*(2) Tax under Schedule D shall be charged under the following Cases:*

*Case V— Tax in respect of any rent in respect of any premises or any receipts in respect of any easement;*

*and subject to and in accordance with the provisions of the Income Tax Acts applicable to those Cases respectively.*

8. Section 75 TCA 1997, Case V: basis of assessment, provides:-

*(1) Without prejudice to any other provision of the Income Tax Acts, the profits or gains arising from –*

*(a) any rent in respect of any premises, and*

*(b) any receipts in respect of any easement, shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule; but such rent or such receipts shall not include any payments to which section 104 applies. ....*

*(5) Section 96 shall apply for the interpretation of this section as it applies for the interpretation of Chapter 8 of this Part.*

9. Section 96(1) TCA 1997, Interpretation, provides:-

*(1) In this Chapter, except where the context otherwise requires – .....*

*"rent" includes –*

*(a) any rentcharge, fee farm rent and any payment in the nature of rent, notwithstanding that the payment may relate partly to premises and partly to goods or services, and*

*(b) any payment made by the lessee to defray the cost of work of maintenance of or repairs to the premises, not being work required by the lease to be carried out by the lessee."*

*"rented residential premises" means a residential premises in respect of which any person is entitled to a rent or receipts from any easements; "residential.*

10. Section 959A of TCA 1997, Interpretation, provides:-

*"chargeable person" means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates;*

11. Section 959B(1) TCA 1997, Supplemental interpretation provisions, provides:-

*(1) For the purposes of the meaning assigned to 'chargeable person' in section 959A, it does not include a person—*

*(a) whose only source or sources of income for a tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for*

*this purpose a person who, in addition to such source or sources of income, has another source or other sources of income shall be deemed for the tax year to be a person whose only source or sources of income for the tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources, which does not exceed €5,000 in total-*

*(i) is taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the tax year applicable to those emoluments, or*

*(ii) is fully taxed at source under section 261,*

*and, for the purposes of deciding whether such income should be taken into account in determining the amount of tax credits and standard rate cut-off point for the tax year, the Revenue Commissioners may have regard to the amount for that, or any previous, tax year of the income of the person from that other source or those other sources before deductions, losses, allowances and other reliefs.*

12. Section 531AM (1)(a) TCA 1997, charge to Universal Social Charge, 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.*

Submissions

*Appellant*

13. The Appellant made the following submissions in support of her appeal:-

*"I have let a property I own since 2003 and made returns to revenue each year and paid what was due. Every year with the exception of 2014 the taxable income was under €5000, that year some work was done in the house and wasn't paid within the year, hence the bigger money.*

*As the return for 2014 was €6144 I had to register as a Self Employed person. In the years that followed I contacted revenue as regards getting out of the self employed category, but this was refused, I spoke to different people over the years as regards what I'd read on*

revenue websites, stating that NON PAYE income less than €5000 was not subject to PRSI and should be Coded against tax credits etc. I was told I was a Chargeable Person and it couldn't be done.

Before I submitted my return for 2019 I sought some advice from accountants as regards my concerns and I got a printout that stated clearly that Non Paye income less than €5000 was not subject to PRSI or USC, I also filled out a section on the Return Form detailing my doubts.

On October 20th 2020 I received a letter from Revenue telling me that I was being removed from their records in respect of Self Assessment and my Rental Income would be coded against my pension, it has happened. This of course seems to tell me that I was being led up the garden path.

I contacted Revenue and spoke to a lady about claiming PRSI & USC for the years 2015-2018, she told me she would speak to her supervisor and she said I would probably get the refund as a tax Credit.

On 7th July 21 I got a letter from Revenue to say that I would remain registered for self assessment as a chargeable person as long as the source of income remains, despite the Tax being levied on a weekly basis through the reductions in Tax Credits and Cut off Points”.

*Respondent*

14. The Respondent made the following submissions in its Statement of Case:

“Rental income is chargeable to tax under Section 18 of the Taxes Consolidation Act 1997 (TCA 1997).....An individual whose non-PAYE income is reduced to nil because allowances or reliefs claimed reduces his or her taxable profits to zero remains a chargeable person because ‘nil profits’ cannot be taxed through the PAYE system. In deciding whether or not non-PAYE income is to be taken into account in determining tax credits and the standard rate cut-off point, Revenue may have regard to the amount of such income for the year in question or previous years. ....If an individual is a chargeable person in one year in relation to a source(s) of income, then regardless of the amount of that income in future years, that person will continue to be a chargeable person so long as those sources of income continue to exist.....As the Non-PAYE Rental Income exceeded the threshold of €3.174 in respect of the tax year 2011, they were deemed a chargeable person and registered for Income Tax. They will continue to be a chargeable person until such time as that source of income ceases.....Section 531(2) of

*the TCA 1997 states that 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. As the aggregate of the Appellants income exceeds €13,000 each year, they are liable to USC on their income.....Revenue merely collect PRSI on behalf of the Department of Social Protection and pay it over to them...with regard to the subject of PRSI is that in general, the payment is compulsory and applies to Individuals between the ages of 16 and pensionable age, currently 66 years. PRSI Class K applies to unearned income such as rental income, investment income, dividends and interest on deposits and savings is liable to a 4% PRSI charge. The Appellant has not come under the PRSI exemption they are therefore liable to PRSI at a rate of 4% for the years in question”.*

### **Material Facts**

15. The Commissioner made the following material findings of fact:-

- (i) The Appellant is in receipt of rental income and liable to income tax under Schedule D Case V.
- (ii) As the Appellant's Non-PAYE rental income exceeded the threshold of €3,174 in respect of the tax year 2011, the Appellant was deemed a chargeable person and registered for income tax.
- (iii) Once registered, the Appellant remains in the self-assessment system so long as the Appellant is in receipt of the source of non PAYE income. This is so even in circumstances where the threshold of €5,000 (€3,174 for 2015 and prior years) is not exceeded.
- (iv) The Appellant having reached the age of 66 in the tax year 2021, is now exempt from paying PRSI from 2021 onwards.
- (v) The Appellant was not exempt from payment of PRSI prior to the tax year 2021 and no exemption applied to the Appellant.
- (vi) As the aggregate of the Appellant's income exceeds €13,000 each year, the Appellant is liable to USC on any income.

### **Analysis**

16. The Appellant is a person who is in receipt of a source of income namely, rent in respect of a property in the State. The Appellant is a chargeable person, in circumstances where in 2011, the Appellant's Non-PAYE income exceeded €3,174 and consequently, she was required to register for income tax self-assessment. The Appellant argues that once her

Non-PAYE income fell below the threshold, she should not have had to remain a chargeable person and should not have been subject to self-assessment.

17. Income tax is charged under Schedule D in respect of a number of sources of income which are classified into 5 separate Cases. In the case of Schedule D, what is taxable are the results of an activity, the carrying on of a trade or profession. Case V charges tax on *“rent in respect of land or premises in the State and on receipts for easements (that is, any right, privilege or benefit in, over or derived from any land or premises in the State such as the right to erect advertising boards)”*. Notably, a charge to tax under Schedule D or one of its constituent Cases may also be imposed by a provision of the Income Tax Acts, other than section 18 TCA 1997.
18. Section 75 TCA 1997, provides the basis of assessment for Case V such that the profits or gains arising from any rent in respect of any premises shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule. Section 96(1) TCA 1997 provides for the interpretation of “rent”.
19. Under section 959A TCA 1997, a chargeable person for self-assessment purposes is a person who is chargeable to tax on that person’s own account or on another person’s account in respect of a chargeable period. Section 959B TCA 1997 contains a number of exceptions to the general rule in section 959A TCA 1997 *inter alia* if an individual is in receipt of PAYE income only or where an individual is in receipt of PAYE and non-PAYE income where the net non-PAYE income assessable to tax is less than €5,000 (€3,174 for 2015 and prior years) and this income is coded against PAYE tax credits or fully taxed at source. [Emphasis added] In such circumstances, an individual is not regarded as a chargeable person, provided gross non-PAYE income before expenses does not exceed €30,000 (€50,000 for 2015 and prior years). Non-PAYE income includes rents.
20. Where non-PAYE sources of income can be charged to tax by coding against an individual’s tax credits, there is no requirement to register the case for income tax self-assessment unless income exceeds the threshold of €5,000 (€3,174 for 2015 and prior years) and a person is therefore required to register for income tax self-assessment.
21. However, once registered an individual whose non-PAYE income is reduced to nil because allowances or reliefs claimed reduces his or her taxable profits to zero remains a chargeable person. This is because zero profits cannot be taxed through the PAYE system. A chargeable person must comply with the full self-assessment regime provided for in Part 41A TCA 1997.



22. An individual whose gross non-PAYE income from all sources exceeds €30,000 (€50,000 for 2015 and prior years) is regarded as a chargeable person notwithstanding that his or her assessable income from non-PAYE sources does not exceed €5,000 (€3,174 for 2015 and prior years).
23. USC is a tax paid on gross income. An individual earning over €13,000 (2021) gross income is liable to pay USC and payment of USC is due when filing your tax return. Section 531AM(2) of the TCA 1997 states that USC shall not be payable for a tax year by an individual who proves to the satisfaction of the Respondent that his or her aggregate income for the tax year does not exceed €13,000.
24. The payment of PRSI is compulsory and applies to individuals between the ages of 16 and pensionable age, currently 66 years. The Appellant reached the age of 66 in 2021 and accordingly is exempt from the payment of PRSI for the years subsequent. PRSI applies to unearned income such as rental income. Notably, even if the rental income was coded against PAYE Tax Credits for all years, PRSI is still chargeable for those years.
25. 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”.*
26. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the tax is not payable as assessed. As set out above, section 959B(1)(a) TCA 1997 provides that an individual who has PAYE and non-PAYE income is not a chargeable person for a tax year if the non-PAYE income does not exceed €5,000 (€3,174 for 2015 and prior years). As the Appellant's income exceeded the threshold, the Appellant was required to register for income tax self-assessment and was so registered. Once registered, the Appellant remains in the self-assessment system so long as the Appellant is in receipt of the source of non PAYE income, this is so even in circumstances where the threshold of €5,000 (€3,174 for 2015 and prior years) is not exceeded. The Commissioner is satisfied that the Respondent did not err in its approach to the Appellant in this regard. Likewise, in relation to PRSI and USC, the Appellant has not shown that the Respondent was incorrect in its application of both taxes.

## **Determination**

27. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the tax is not payable. Accordingly, the Notice of Amended Assessment issued by the Respondent on 3 July 2021, in relation to income tax for the year 2019, in the sum of €861.61 shall stand.
28. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether her legal rights were correctly applied.
29. This appeal is hereby determined in accordance with Part 40A of the TCA 1997 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  
September 2022