



22TACD2022

Between

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal comes before the Tax Appeals Commission [hereinafter the “Commission”] as an appeal against Notices of Amended Assessment for the tax years 2012 and 2013 issued by the Revenue Commissioners (“the Respondent”) on 15th March 2016.
2. The oral hearing took place before the Commissioner on 3rd February 2022. The Appellant was represented by her Tax Agent, who also attended the hearing remotely. Revenue officers also attended remotely. The Appellant was articulate and well-prepared. The Tax Agent also assisted the Appellant in presenting her appeal with efficiency. The Commissioner is appreciative of all the parties for attending the hearing remotely.
3. The amount of tax at issue is €19,943.00.

Background

4. The Appellant was the recipient of funding for a postdoctoral programme in ██████████ between March 2012 and March 2013. The funding contract referred to the Appellant

as a “*Fellow*” and that the programme which she would undertake as a “*fellowship*”. The funding received by the Appellant was in the amount of €3,550.00 per month.

5. The Appellant made her annual Income Tax Returns as required and did not return the funding received by her in 2012 and 2013 as income.
6. The Respondent undertook an audit of the Appellant’s Income Tax Return for the tax years 2012 and 2013 and on 15th March 2016 issued Notices of Amended Assessment for both years to the Appellant which indicated the following balances as being payable by the Appellant:

i. 2012	€14,319.84
ii. 2013	€5,623.20

7. The basis of the Notices of Amended Assessment was on the grounds that the Appellant was not entitled to avail of the exemption available in relation to income from scholarships as set out in section 193 of the Taxes Consolidation Act 1997 [hereinafter the “TCA 1997”] because, in the Respondent’s view, the funding received by the Appellant was not a scholarship as defined under section 193 of the TCA 1997.
8. The Appellant, through her Tax Agent, requested an External Review of this decision. The requested external review was carried out and the results were issued to the Appellant and her Tax Agent on 28th July 2016. The External Reviewer who undertook the review agreed with the position taken by the Respondent.
9. A Notice of Appeal was lodged with the Commission by the Appellant through her Tax Agent on 1st April 2016 and set out the following grounds of appeal:
 - i. The Appellant is not liable to Irish income tax on the postdoctoral fellowship as it falls within the ambit of section 193 of the TCA1997;
 - ii. The Appellant was resident in [REDACTED] from March 2012 until March 2013 where she maintained a permanent abode and [REDACTED] was where her centre of vital interests for the relevant years / periods. Therefore, the funding received by the Appellant was not subject to Irish income tax pursuant to Articles 14 and 15 of the Double Tax Treaty between [REDACTED] and the Republic of Ireland.

Legislation and Guidelines

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

Section 112 TCA1997

“112 Basis of assessment, persons chargeable and extent of charge.

(1)Income tax under Schedule E shall be charged for each year of assessment 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.

(2)(a)In this section, “emoluments” means anything assessable to income tax under Schedule E.

(b)Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of subsection (1):

(i)if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii)if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

Section 193 TCA1997:

“(1)(a)In this section—

“relevant body” means a body corporate, unincorporated body, partnership, individual or other body;

“relevant scholarship” means a scholarship provision for which is made, either directly or indirectly, by a relevant body or a person connected with the relevant body and where payments are made, either directly or indirectly, in respect of such a scholarship to—

(i)an employee or, where the relevant body is a body corporate, a director of the relevant body, or

(ii)the spouse, civil partner, family, dependants, servants or children of the civil partner of such employee or director;

“scholarship” includes an exhibition, bursary or other similar educational endowment.

...

(2) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for the purposes of the Income Tax Acts.

(3) Nothing in subsection (2) shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from a charge to income tax.

(4) Notwithstanding subsection (3), a payment of income arising from a relevant scholarship which is—

(a) provided from a trust fund or under a scheme, and

(b) held by a person receiving full-time instruction at a university, college, school or other educational establishment,

shall be exempt from income tax if, in the year of assessment in which the payment is made, not more than 25 per cent of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in paragraph (b) is attributable to relevant scholarships.

(5) If any question arises whether any income is income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment, the Revenue Commissioners may consult the Minister for Education and Science.”

Section 819 TCA1997

“Residence

(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State—

(a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or

(b) at any one time or several times—

(i) in the year of assessment, and

(ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days

on which the individual was present in the State in the preceding year of assessment) in the aggregate amounting to 280 days or more.

(2) Notwithstanding subsection (1)(b), where for a year of assessment an individual is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days—

(a) the individual shall not be resident in the State for the year of assessment, and

(b) no account shall be taken of the period for the purposes of the aggregate mentioned in subsection (1)(b).

(3) (a) Notwithstanding subsections (1) and (2), an individual—

(i) who is not resident in the State for a year of assessment, and

(ii) to whom paragraph (b) applies,

may at any time elect to be treated as resident in the State for that year and, where an individual so elects, the individual shall for the purposes of the Acts be deemed to be resident in the State for that year.

(b) This paragraph shall apply to an individual who satisfies an authorised officer that the individual is in the State—

(i) with the intention, and

(ii) in such circumstances,

that the individual will be resident in the State for the following year of assessment.

(4) For the purposes of this section—

(a) as respects the year of assessment 2008 and previous years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day, and

(b) as respects the year of assessment 2009 and subsequent years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at any time during that day.”

Submissions

11. At the oral hearing the Commissioner heard oral evidence and submissions on behalf of the Appellant and heard submissions on behalf of the Respondent.

Appellant's Submissions

12. The Appellant gave evidence at the oral hearing as follows:
13. The Appellant stated that she trained as a [REDACTED] and worked mainly in [REDACTED] until she undertook a post-graduate doctorate (PhD) which she completed in [REDACTED]. She stated that subsequent to completing her PhD she was employed as a postdoctoral Fellow at [REDACTED] where she was part of a team undertaking externally funded research.
14. The Appellant stated that when this Fellowship ended she applied for jobs and other opportunities in her field. In January 2012 the Appellant was awarded funding by the [REDACTED] [REDACTED] as a "Fellow" for a 12 month period from March 2012 to March 2013 at the [REDACTED] [hereinafter the "[REDACTED]"]. The funding received by the Appellant was in the amount of €3,550.00 per month.
15. The Appellant stated that the purpose of the postdoctoral programme was to train participants in high level research skills. She stated that most students, even at PhD level, do not possess and are not professionally trained in research skills such as gathering and analysing data and learning how European research projects are built. The purpose of the postdoctoral programme which the Appellant participated in, and for which the funding was awarded, was to train participants in these skills which would in turn allow them to participate in high level research at European level. This was one of the areas that the Appellant was interested in working.
16. The Appellant stated that she had a non-working visa for [REDACTED] which allowed her to participate in the postdoctoral programme but which did not allow her to work whilst in [REDACTED]. In addition the contract for the bursary which she received explicitly stated that she would not be entitled to claim unemployment benefits or avail of the [REDACTED] health system as a result of the bursary contract. In that regard the funding received by the Appellant also contained health insurance for the period of the postdoctoral programme.
17. The Appellant stated that the postdoctoral programme was run in the same manner as all other programmes in [REDACTED] in that it was structured around the normal college semesters. She described her days as running from 8am to 4pm with the same breaks as all other students. The Appellant stated that her time was spent reading, writing and attending clinics at [REDACTED] which allowed her to hone her research skills.

In addition the Appellant attended seminars and lectures for two / three hours a day as well as attending group sessions where participants would be led by Professor [REDACTED] who was the head of the postdoctoral programme.

18. In addition to the above, the Appellant also had one-to-one sessions in Professor [REDACTED] office where he instructed the Appellant on the particular area of research she was learning and also instructed her on how to deal with problems that she had encountered by suggesting improved methodologies. The Appellant would then return to the particular area she was working in and would implement Professor [REDACTED] suggested improvements.
19. The Appellant stated that her experience with postdoctoral positions in Ireland was with [REDACTED] where she had been employed as a postdoctoral Fellow and where she was paid a salary with the normal pension and other deductions being taken from her salary by [REDACTED]. The Appellant stated that the funding which she received for her study at [REDACTED] was entirely different and she described it as a "*special type of fellowship*". She stated that she did not pay tax in [REDACTED].
20. The Appellant stated that the funding which she received was intended to cover the expense of accommodation and food whilst participating in the postdoctoral programme. She described the cost of living in [REDACTED] as being extremely high and compared the price of a McDonald's burger in Ireland at the time as being in or around €5 whereas the same burger in [REDACTED] would cost in or around €20. She stated that the funding allowed her to rent a room in a house for the year and that the reason she rented the room for the full year was that it was particularly difficult to secure accommodation and students generally rented their accommodation for the full academic year to ensure they had accommodation at all times. The Appellant stated that she returned to Ireland during the usual college breaks for Christmas, Easter, bank holidays and mid-term breaks.
21. The Appellant's Tax Agent submitted to the Commissioner that the Appellant is entitled to avail of the exemption contained in section 193 of the TCA1997 which exempts income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment from income tax. The basis for this submission was as follows:
 - i. The Appellant was under full-time instruction during her time in [REDACTED];
 - ii. The Appellant was a senior and full-time student;

- iii. The monies received by the Appellant were not connected to an employment;
- iv. The Appellant was entitled to be in [REDACTED] by way of a non-working visa.

Respondent's Submissions

22. The Respondent submitted that they come from the view that the postdoctoral programme which the Appellant participated in was a "Fellowship" and that this appeal falls on the fact of whether the Appellant was a student or whether she was a fellow. The Respondent submitted that in their view the Appellant was participating in a Fellowship and was conducting postdoctoral research and hence was a fellow.

Material Facts

23. The following material facts are at issue in this Appeal:

- i. The Appellant was a postdoctoral student at [REDACTED] under full-time instruction and was not participating in a Fellowship within the meaning understood in the Irish third level system.

24. The Commissioner has examined the material fact at issue.

The Appellant was a postdoctoral student at [REDACTED] under full-time instruction and was not participating in a Fellowship within the meaning understood in the Irish third level system:

25. The Commissioner has considered the evidence, both oral and documentary, submitted by the Appellant in relation to her claim that she was a postdoctoral student at [REDACTED] under full-time instruction and that she was participating in a fellowship.

26. In support of this claim the Appellant submitted a letter from the Head of Research section at [REDACTED] dated 7th December 2015 which stated:

"Dr [REDACTED] has been visiting as a postdoctoral fellow at the Department of [REDACTED] [REDACTED].

Dr [REDACTED] was hosted by Professor [REDACTED] at the [REDACTED] [REDACTED] research group.

The fellowship was an engagement from the [REDACTED] [REDACTED] for a postdoctoral stay at [REDACTED].

The duration of the fellowship was 12-months from 16 March 2012 to 15 March 2013.

The main purpose of the [REDACTED] fellowship programme is to foster collaborative work within the European research community. The fellow's duties are restricted to the research training programme outlined in cooperation with the hosting Professor before arrival, and the fellows are not called upon to undertake other tasks.

The fellows are integrated into the host research teams. The results of the studies in which they co-operate belong to the host organisation according to the rules of [REDACTED] intellectual property law.

During her stay at [REDACTED] Dr [REDACTED] was doing basic research based on her own research interests, she was not employed by the university; but received a bursary paid out from [REDACTED] on the amount of 3550 euro a month to cover cost of living in [REDACTED].”

27. In addition the Appellant submitted a letter from the [REDACTED] [REDACTED] dated 18th November 2015 which stated:

“We hereby certify that Dr [REDACTED] has been selected in the framework of the [REDACTED] Fellowship Programme.

The duration of the fellowship was of 12 months from March 16th, 2012 to March 15th, 2013 at:

[REDACTED]
Dr [REDACTED] received a monthly bursary (not a salary) paid by [REDACTED] via [REDACTED] of €3550.

Dr [REDACTED] was covered by personal health insurance provided by [REDACTED], the cost of which is paid by [REDACTED]. The insurance also covered medical transportation costs, payment of a lump sum for invalidity or death and personal liability.”

28. In addition the Commissioner has considered a letter which the Respondent submitted from the Department of Education to the Respondent dated 2nd December 1994 which was obtained by the Respondent on foot of a query sent to the Department of Education by the Respondent and which states:

“In the Department we have always regarded fellowships as being quite different from scholarships. For example, up to 1987 we used to offer 10

postdoctoral fellowships per annum for people to undertake research and study in particular subjects in the Universities. We regarded the fellowship as a salary i.e. full tax and PRSI were deducted from the amount of the fellowship.”

29. Having considered all of the evidence and submissions from both the Appellant and the Respondent, the Commissioner is satisfied that the Appellant was undergoing postdoctoral study and was under full-time instruction. The Commissioner finds that although the language used by the awarding authorities of the funding received by the Appellant uses the words “Fellow” and “Fellowship” to describe the purpose of the funding, the postdoctoral programme undertaken by the Appellant at [REDACTED] was materially different from the Fellowship which was undertaken at postdoctoral level by the Appellant in Ireland. It is clear from the correspondence submitted by the Appellant from [REDACTED] that the Appellant’s duties there were restricted to the research training programme.
30. The Commissioner can understand that the Respondent relied on the use of the words “Fellow” and “Fellowship” in the documentation submitted by the Appellant and on the explanation received from the Department of Education in its letter of 2nd December 1994. However, the Commissioner is satisfied that the postdoctoral programme which the Appellant underwent was not a Fellowship in the same context as one in Ireland. The Commissioner is satisfied that the Appellant was undergoing full-time instruction on research skills such as gathering and analysing data and learning how European research projects are built for the duration of the postdoctoral programme.
31. The Commissioner finds that the Appellant was a postdoctoral student at [REDACTED] under full-time instruction and was not participating in a Fellowship within the meaning understood in the Irish third level system. Therefore this material fact is accepted.
32. Therefore the following are the material facts which the Commissioner has accepted:
- i. The Appellant was a postdoctoral student at [REDACTED] under full-time instruction and was not participating in a fellowship within the meaning understood in the Irish third level system.

Analysis

33. Section 193(2) of the TCA1997 provides that:

“Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such

income in computing the amount of income for the purposes of the Income Tax Acts.”

34. Section 193(1)(a) of the TCA1997 defines “*scholarship*” as including:

“...an exhibition, bursary or other similar educational endowment.”

35. Having accepted that the Appellant was a postdoctoral student at [REDACTED] under full-time instruction and was not participating in a fellowship within the meaning understood in the Irish third level system, the Commissioner finds that the Appellant was in receipt of a scholarship as defined by section 193(1)(a) of the TCA 1997.

36. Having found that the Appellant was in receipt of a scholarship as defined by section 193(1)(a) of the TCA 1997, the Commissioner further finds that the Appellant is entitled to rely on the provisions of section 193(2) of the TCA 1997 and that the income received by the Appellant in relation to the postdoctoral programme she underwent in [REDACTED] between March 2012 and March 2013 is exempt from income tax. The Commissioner having found that the Appellant is exempt from income tax due, the Commissioner is not required to consider the Appellant’s submission in relation to the Double Taxation Treaty.

Determination

37. 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, is 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.”

38. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner concludes that the Appellant has succeeded in discharging the burden of proof in relation to this appeal and has shown that the tax is not payable.

39. As a result, the Commissioner determines that the Notices of Amended Assessment issued by the Respondent on 15th March 2016 in relation to the tax years 2012 and 2012 shall not stand. The Commissioner commends the Appellant and her Tax Agent for their preparation and articulation of the facts in this appeal.

40. 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.

A handwritten signature in black ink, appearing to read 'Clare O'Driscoll', written in a cursive style.

Clare O'Driscoll
Appeal Commissioner
4th February 2022