



37TACD2022

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against the refusal of the Revenue Commissioners (hereinafter “the Respondent”) of a request by the Appellant to amend assessments for the years 1989/1990 to 1996/1997. The amendments sought by the Appellant involve a redistribution of income between the Appellant and his wife and do not affect the overall tax payments made on foot of the returns.

Background

2. The Appellant is an ██████████ having registered for income tax on 1st July 1978. The Appellant filed his income tax returns for the years 1989/1990 – 1996/1997 in the normal course and in those returns indicated Schedule D Case 1 income from his ██████████ trade in his own name.
3. On 26th January 2017 the Appellant wrote to the Respondent requesting that the assessments for the years 1989/1990 – 1996/1997 be amended to split the Case 1 income figures between himself and his wife and for the assessments for those years to reflect Case 1 income for his wife.

4. On 31st May 2018 the Respondent wrote to the Appellant refusing his request on the basis that the requested amendments were outside the 4 year time limit for a chargeable person to amend a return as set out in section 959V(6) of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997").
5. The Appellant appealed the Respondent's decision on 21st June 2017.
6. The oral hearing of the within appeal occurred on 28th February 2022 at which no direct evidence was given or sought to be given by the Parties and at which the Commissioner heard submissions on behalf of both Parties.

Legislation and Guidelines

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

Section 955 of the TCA 1997:

"(1) Subject to subsection (2) and to section 1048 , an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

(2) (a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period in which the return is delivered and no additional tax shall be payable by the chargeable person and no tax shall be repaid to the chargeable person after the end of the period of 4 years by reason of any matter contained in the return.

(b) Nothing in this subsection shall prevent the amendment of an assessment—

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii) to give effect to a determination on any appeal against an assessment,

(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv) to correct an error in calculation, or

(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804 (3).

(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine—

(a) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(b) that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4) (a) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(b) This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question.

(5) (a) In this subsection, "relevant chargeable period" means—

(i) where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii) where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii) where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(b) Sections 919 (5) (b) and 924 shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(c) For the purposes of paragraph (b), where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person.”

Section 959AA of the TCA 1997:

“(1)Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period—

(a)an assessment for that period, or

(b)an amendment of an assessment for that period,

shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

(i)no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii)no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.”

Section 959V of the TCA 1997:

“(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

(2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self assessment for the chargeable period at the same time.

(2A) A return and self assessment may be amended under this section only where such an amendment—

(a) arises from an allowance, credit, deduction or relief due under the Acts,

(b) is necessary to correct either an error or a mistake, or

(c) is necessary to comply with any other provision of the Acts,

and notice of an amendment under this section shall specify which of paragraphs (a), (b) and (c) applies.

(3) Subject to subsection (4), notice under this section shall be given in writing to a Revenue officer in the Revenue office dealing with the tax affairs of the chargeable person.

(4)(a) Notice under this section in relation to the amendment of a return and a self assessment shall be given by electronic means where the return was delivered by electronic means.

(b) The electronic means by which notice under this section shall be given shall be such electronic means as may be specified by the Revenue Commissioners for that purpose.

(c) This subsection shall not apply to an amendment to a return or self assessment in so far as it relates to capital gains tax.

(5) Where another person, as referred to in section 959L, is acting under the chargeable person’s authority—

(a) notice under subsections (1) and (2) may be given by that other person, and

(b) where notice is so given by that other person—

(i)the Acts apply as if the return and the self assessment had been amended by the chargeable person, and

(ii)a return and a self assessment purporting to have been amended by or on behalf of any chargeable person shall for the purposes of the Acts be deemed to have been amended by that person or by that person's authority, as the case may be, unless the contrary is proved.

(6)(a)Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.

(b)Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an 35 amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief.

(7)Notice under this section shall not be given in relation to a return and a self assessment after a Revenue officer has started to make enquiries under section 959Z in relation to the return or self assessment or after he or she has commenced an audit or other investigation which relates to the tax affairs of the person to whom the return or self assessment relates for the chargeable period involved.”

Submissions

Appellant's Submissions:

8. At the outset of the oral hearing the Appellant indicated that he was withdrawing his appeals in relation to the Respondent's refusal to allow amendments to the returns for the years 1992/1993 – 1996/1997 and that the appeal now relates to the years 1989/1990, 1990/1991 and 1991/1992 (hereinafter “the relevant years”).
9. In support of his appeal the Appellant submitted that for the relevant years he ran an [REDACTED] and his wife also worked in the [REDACTED]. He stated that in error he incorporated her income into his own income in the returns which he made to the Respondent for the relevant years and that he now wishes to correct this error. The Appellant submitted that this error has meant that his wife's claim for a contributory pension has been negatively affected.

10. The Appellant submitted that section 955(2) of the TCA 1997 applies to this matter for the following reasons:

10.1 Section 955(2) of the TCA 1997 remains applicable for returns relating to tax years prior to 2013;

10.2 The Respondent's Tax and Duty Manual Part 37-00-31 which was reviewed in March 2020 acknowledges that section 955(2) applies to years of assessment prior to 2013 and accounting periods ending on or before 31st December 2012;

10.3 The Respondent's Notes for Guidance dated December 2021 in relation to section 955 of the TCA 1997 sets out the details of the non-application of a time limit for amending an assessment and in particular notes that a time limit does not apply to the amendment of an assessment "*...in order to correct any factual mistake so as to align the assessment with the position as disclosed by the chargeable person.*".

10.4 The Supreme Court judgement in *The Revenue Commissioners v Hans Droog* IESC 218/2011 [hereinafter "*Droog*"] held that "*...the fact that and undoubtedly express exclusion of the time limit...has been introduced...cannot affect one way of the other the question of whether, on a proper interpretation, the time limit applied prior to that amendment.*"¹;

10.5 The Respondent allowed the Appellant's 2010 return to be amended in October 2016.

Respondent's Submissions:

11. The Respondent submitted that section 955 of the TCA 1997 was deleted in 2013 and was not in force at the time the Appellant made his application to amend the relevant returns.

12. The Respondent submitted that section 959AA of the TCA 1997 which provides a 4 year limitation period for the amendment of assessments is applicable to the within appeal. The Respondent submitted that they rely on section 959AA of the TCA 1997 as the basis for the refusal of the Appellant's request to amend the relevant returns.

13. The Respondent further submitted that the Respondent's wife was first registered as self-employed on 6th April 1997 and that she ceased to be registered as self-employed on 30^h June 1997.

¹ At paragraph 5

Material Facts

14. The following material facts are agreed by the Parties and are accepted by the Commissioner:

- 14.2 The Appellant made the relevant returns on time and in the normal course;
- 14.2 The Appellant submitted a request to amend the relevant returns to the Respondent on 26th January 2017;
- 14.3 The Respondent refused the Appellant's request by way of letter dated 31st May 2017.

Analysis

15. Section 955 of the TCA 1997 is headed "*Amendment of and time limit for assessments*" and subsection 2(a) thereof imposes a 4 year limitation period for the amendment of assessments as follows:

"Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period in which the return is delivered and no additional tax shall be payable by the chargeable person and no tax shall be repaid to the chargeable person after the end of the period of 4 years by reason of any matter contained in the return."

16. Subsection (2)(b) of section 955 of the TCA 1997 sets out exceptions to the 4 year time limit imposed by subsection 2(a) as follows:

"Nothing in this subsection shall prevent the amendment of an assessment—

- (i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),*
- (ii) to give effect to a determination on any appeal against an assessment,*
- (iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,*
- (iv) to correct an error in calculation, or*
- (v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,*

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804 (3)."

17. The Appellant relies on section 955(2)(b)(v) of the TCA 1997 in support of his appeal and submits that the relevant returns contained mistakes of fact in that the relevant returns should have reflected the fact that his wife was working in the Appellant's [REDACTED] [REDACTED] during the relevant periods.
18. On the other hand the Respondent does not accept that section 955 of the TCA 1997 applies to the Appellant's claim because the claim was made in 2017 and submits that section 959AA is the relevant section of the TCA 1997 which applies and in particular the 4 year limitation period which that section imposes.
19. The Commissioner has considered the submissions made by the Parties herein and finds that the Appellant is correct in his assertion that section 955 of the TCA 1997 is applicable in this instance. The Appellant has sought to amend returns which were made in normal course and on time for the years 1989/1990, 1990/1991 and 1991/1992. Section 955 of the TCA 1997 was deleted by section 129(2) of the Finance Act 2012 with effect from 1st January 2013 however this deletion does not have retrospective effect and applies to returns made for the years 2013 and onwards. The judgment in *Droog* supports this interpretation. In addition the Respondent's publications which the Appellant has highlighted acknowledge the application of section 955 of the TCA 1997 to returns and assessments made prior to 2013.
20. Having accepted that section 955 of the TCA 1997 applies, the Commissioner has further considered the submissions made by the Parties and in particular has considered whether the Appellant has established that the relevant returns contained a mistake such that they should be amended under the provision of section 955(2)(b)(v) of the TCA 1997.
21. 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."
22. The Appellant has not submitted any evidence or documentation to the Commissioner which establishes that his wife was working for his [REDACTED] during the relevant periods nor did the Appellant's wife, or any other person, give evidence at the oral hearing. During the course of the hearing the Commissioner checked with the Appellant

on at least three occasions as to whether he wished to make any further points or submissions to support his appeal and the Appellant indicated that he did not.

23. In the absence of any evidence which supports the Appellant's claim that his wife worked for his [REDACTED] during the relevant periods, and in circumstances where the Appellant's wife was registered as commencing self-employment on 6th April 1997 ceasing on 30th June 1997, the Commissioner finds that Appellant has not discharged the burden of proof to satisfy the provisions of section 955(2)(b)(v) of the TCA 1997 that an amendment may be made to the relevant returns to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person. The Commissioner finds that the Appellant has not established that a mistake of fact occurred in the relevant returns.

Determination

26. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the relevant returns should be amended.

27. It is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant has found himself in an unfortunate situation and the Commissioner has every sympathy with his position. The Appellant was correct to check to see whether his legal rights were correctly applied.

28. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AL 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.



Clare O'Driscoll
Appeal Commissioner
4th March 2022