AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

38TACD2022

Between

[redacted]

Appellants

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal under section 458(1) (A) Taxes Consolidation Act 1997, as amended ("TCA 1997"). In accordance with that section, the Revenue Commissioners ("The Respondent) refused to allow the Appellants carry-back and offset excess medical expenses incurred in 2015 against income tax due for the tax year 2011.

2. On agreement of the parties, the appeal took the form of a "hybrid hearing" with the Appellants physically and the Respondent remotely attending the hearing. The Commissioner appreciated the Appellants presenting their case in spite of health matters and thanked them for their preparation and in attending the hearing.

Background

3. The Appellants, a married couple, had combined income of €41,189.86 in 2015. Their tax liability for that year was €8,699.71 and they had taxes remitted at source by their employers and Deposit Interest Retention Tax ("DIRT") withheld which amounted to €2,923.18. The tax credits available to the Appellants were sufficient to reduce their tax liability to nil for that year, thereby entitling them to a refund of the full amount of

taxes remitted and withheld on their behalf. However, a tax liability from 2011 of €1,299.92 remained on record, and this was deducted from the 2015 refund, resulting in a net repayment of €1,623.26 which was subsequently repaid to the Appellants.

4. The Appellants contacted the Respondent, pointing out that while they had filed a claim for medical expenses in the sum of €17,499.08 for 2015, sufficient to generate a notional health expenses credit of €3,499.82, this had been restricted to €1,609.71. The Appellants argued that as the Form P21 ("balancing statement") for 2015 included the underpayment for 2011 in the total amount of tax due, then the 2011 underpayment should be covered by their "unused" 2015 health expenses credit. This would have the effect of reducing the 2011 liability to nil and thereby allowing the full amount of tax deducted in 2015 to be refunded.

5. The Appellants further submitted that restricting their tax credits to their 2015 liability while at the same time reducing their overpayment for the amount of their liability for 2011 amounted to double taxation.

6. Further or in the alternative, the Appellants submitted that if they were not entitled to carry the unused medical expenditure back to 2011 then they should be allowed to carry them forward and claim them as an allowance for the tax years 2006, etc.

Legislation

The relevant legislative provisions are set out below.

7. Section 458 (1) TCA 1997 provides, *"An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and, subject to subsection (1B), makes a return in the prescribed form of the individual's total income shall be entitled—*

(a) for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax (in the Income Tax Acts referred to as "the taxable income") to have such deductions as are specified in the provisions referred to in Part 1 of the Table to this section, but subject to those provisions, made from the individual's total income, and

(b) to have the income tax to be charged on the individual reduced by such tax credits and other reductions as are specified in the provisions referred to in Part 2 of that Table, but subject to subsection (1A) and those provisions.

(1A) Where an individual is entitled to a tax credit specified in a provision referred to in Part 2 of the Table to this section, the income tax to be charged on the individual for

the year of assessment, other than in accordance with section 16(2), shall be reduced by the lesser of—

the amount of the tax credit, or

the amount which reduces that income tax to nil.

8. Section 469 (2) (a) TCA 1997 provides, *"Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of healthcare, the income tax to be charged on the individual….. for that year of assessment shall be reduced by the lesser of –*

   (i) the amount equal to the appropriate percentage of the specified amount, and

   (ii) *the amount which reduces that income to nil*.

9. Section 469 (1) TCA 1997 defines the "appropriate percentage" in relation to a year of assessment as "*a percentage equal to the standard rate of tax for that year"*.

10. Section 865 (1) (a) TCA 1997 states *"where a person furnishes a statement of return which is required to be delivered by that person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax……."*.

11. Section 960 (H) TCA 1997 permits the Respondent to offset refunds against sums owed. It states:

    "Where the Collector-General is satisfied that a person has not complied with the obligations imposed on a person in relation to either or both-

    (a) the payment of tax that is due and payable, and

    (b) the delivery of returns required to be made,

        (i) then the Collector-General may, in a case where a repayment is due to the person in respect of a claim or overpayment-Where paragraph (a) applies, or where paragraphs (a) or (b) apply, instead of making the repayment, set off the amount of the repayment against any liability."

12. Section 865 TCA 1997 provides:

    "(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been

due from the person, the person shall be entitled to repayment of the tax so paid. ... ...

[(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.]

[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made – (i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates

. … …

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision]."

Submissions

Appellants

13. The Appellants were of the view that they were entitled to offset the full allowable amount of medical expenses incurred in the tax year 2015, not only against 2015 income tax but also income tax arising from earlier tax years, in particular 2011.

14. The Appellants submitted the 2015 tax calculation on the balancing statement included double the amount of income tax owing for 2011 in that the liability was included in panel 7A "adjustments", and then subsequently deducted from the refund. The Appellants submitted that this amounted to "double taxation".

15. The Appellants further submitted if they were not entitled to carry back the "unused" 2015 medical expenses, they should be allowed to carry these forward against future taxable income. In addition, they submitted that they should not be prejudiced by the "4-year rule" which generally disallows claims for repayment of income tax where the claim is submitted more than four years after the year of assessment in which the claim arose.

Respondent

16. The Respondent submitted that in 2015 under S458 (1) (A) TCA 1997 the Appellants' medical expense claim was restricted to the amount of tax paid, after the deduction of other personal allowances.

17. They also submitted that such portion of the medical expenses incurred and paid for in 2015 could not be carried back and offset against tax liabilities of previous or subsequent years of assessment.

Material Facts

18. The Commissioner finds the following material facts:-

    (i) A valid tax return was made and submitted by the Appellants in accordance with the requirements of section 458 (1) TCA 1997.

    (ii) This tax return constituted a valid claim for repayment under section 865 (1) TCA 1997.

    (iii) The Appellants owed the sum of €1,299.92 to the Respondent in respect of the tax year 2011 and this was agreed between both parties.

(iv) A valid medical expense claim for 2015 was submitted by the Appellants in which they claimed the amount of €17,499.08 in allowable medical expenses for that year.

(v) Only the sum of €8,048.55 of these medical expenses was required to reduce the Appellant's income tax liability for 2015 to nil.

(vi) The amount of unutilised medical expenses for 2015 was therefore €9,450.53.

(vii) The amount of tax remitted by the Appellants' employers and the amount of DIRT deduced on deposit interest in respect of the tax year 2015 totalled €2,923.18 and this equated to the total amount of tax paid for 2015.

(viii) The maximum amount of income tax that could have been refunded in the tax year 2015 was the amount paid, €2,923.18.

(ix) The underpayment in respect of 2011, €1,299.92 was offset against the amount refundable for 2015, and the resultant figure €1,623.26 was repaid to the Appellants.

Analysis

19. During the course of the hearing, the balancing statement for 2015 was analysed in depth. The Appellants accepted that the income tax due for 2011 was only deducted once and as such no double taxation arose. They pointed out that their confusion arose from the deduction shown at Panel 7A of the balancing statement - "Adjustments – U/P collected €1,299" and understood that a further deduction was also taken from them when the underpayment was deducted from the 2015 refundable amount.

20. The Commissioner noted that further confusion arose in respect of the balancing statement narrative underneath Panel 3 which states that "tax credits are restricted to tax due" and since they had a liability for 2011, which was "tax due", the Appellants failed to understand why this could not be covered by the under-utilised medical expenses incurred in 2015. The Commissioner understands the origin of the confusion and the wording did not aid general understanding for the Appellants. The Commissioner noted that if the wording stated "tax credits are restricted to tax due <u>in the current year of assessment</u>" it may have negated the appeal.

21. The wording of section 485 (1) TCA 1997 is clear and unambiguous and states that the maximum amount of any allowance which may be claimed is restricted to the amount of the allowance or, if lower, the amount of the tax payable.

22. This is further supplemented by section 469 (2) (a) which provides that medical expenses which may be claimed in any one tax year are restricted to the amount of income tax chargeable in that period or if less, the amount of the claim itself.

23. Section 960(H) TCA 1997 permits the amount of tax refundable in any particular tax year to be reduced by the amount of tax owed in respect of previous, or indeed subsequent years of assessment.

24. The Respondent is therefore correct in restricting the medical expenses claim to the amount of tax chargeable in 2015. Furthermore, they are entitled to collect the underpayment for 2011 from the 2015 refund.

25. Section 469 (2) (a) TCA 1997 by its express wording only permits medical expenses incurred and paid for in a tax year to be offset against income for that year. There is no provision contained in the legislation which allows either the carry back or carry forward of such expenses to previous or subsequent years of assessment.

Determination

26. In accordance with section 949 AF TCA 1997, the Commissioner at the conclusion of the hearing made an oral determination which now in accordance with that section is confirmed in this determination in writing. The Commissioner finds that the Appellants are not successful in their appeal as section 458 (1) (A) TCA 1997 makes it clear that the maximum amount of any relief which may be claimed in any particular tax year is the amount which reduces the tax payable to nil.

27. This is further endorsed in section 469 (2) (a) (ii) which states that the maximum amount of medical expenses which may be claimed in any tax year is restricted to the amount which reduces the tax payable to nil.

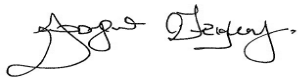
28. The Commissioner finds that the Respondent acted properly in accordance with section 960 (H) (ii) TCA 1997 in that they were permitted to offset the income tax due for 2011 against the 2015 refund.

29. In accordance with the wording of section 469 (2) (a) TCA 1997, the Commissioner determines that there is nothing contained within that provision which permits the portion of the unused 2015 medical expenses to be carried back and offset against previous years of assessment, in particular 2011. The wording of the provision also

prohibits the carry forward and offset of such expenses against subsequent years of assessment.

30. Although, no valid claim exists, pursuant to the wording of section 865 TCA 1997, and in particular the use of the word “shall” as set out in subsection 865(4) TCA 1997, the Commissioner determines that there would be no discretion as regards the application of the four-year statutory limitation period in circumstances where a valid claim had been made outside of the four-year period.

31. The appeal is determined in accordance with section 949AK TCA 1997. 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.



Andrew Feighery
Appeal Commissioner
8th March 2022