



Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against a PAYE/USC Balancing Statements (P21) for 2015 and 2016 which were raised by the Revenue Commissioners (hereinafter the “Respondent”) on 12th April 2017.
2. The oral hearing took place before the Commissioner on 15th March 2022. The Appellant appeared remotely on her own behalf and was not represented by a Tax Agent. Officers on behalf of the Respondent also attended remotely. The Appellant was articulate and well-prepared.
3. The amount of tax at issue is €5,916.83.

Background

4. The Appellant is a married woman and was previously jointly assessed with her husband. On 13^h April 2015 an Agent on behalf of the Appellant’s husband wrote to the Respondent indicating that he and the Appellant wished to elect for separate treatment of their tax affairs from 2015 onwards. No reason was given at that time for

the election. A similar letter was sent by the Tax Agent to the Respondent on 11th May 2015 and again no reason for the election was given.

5. At that time the Appellant's PPS number was linked to her husband's PPS number and the Appellant's PPS number was what was known as a "W" number. As a result the Appellant was informed that it was not possible for the Respondent to action the election of the Appellant and her husband for separate treatment until such time as the Appellant was issued with her own PPS number from the Department of Social Welfare. The Appellant acquired her own separate PPS number which was not linked with that of her husband and supplied same to the Respondent on the 24th day of June 2015.
6. Despite the election for separate treatment having been made by the Appellant and her husband, the Appellant acquiring her own separate PPS number from the Department of Social Welfare and supplying the new PPS number to the Respondent, the Respondent did not act on the election for separate treatment by the Appellant and her husband.
7. On 29^h January 2016 the Appellant's husband emailed the Respondent indicating, *inter alia*, that he was at that time living, working and paying his taxes in England. Again at this point the Respondent did not act on the information they had received in relation to the election for separate tax treatment.
8. Following a telephone call by the Appellant to the Respondent on 12th of April 2017 the Respondent reviewed the Appellant's tax position and issued the disputed PAYE/USC Balancing Statements (P21) for 2015 and 2016 to the Appellant which indicated an underpayment of tax of €2,915.43 for 2015 and €3,001.40 for 2016 being a total of €5,916.83.
9. During this period from April 2015 until April 2017 when the Respondent had not actioned the election by the Appellant and her husband for separate tax treatment, the Appellant continued to be in receipt of tax credits as if jointly assessed with her husband. This was despite the fact of the election for separate treatment which was first made on 13th April 2015 by the Appellant's husband and despite the fact that the Appellant's husband had informed the Respondent on 29th January 2016 that he was living, working and paying his taxes in England.
10. A Notice of Appeal was lodged by the Appellant dated 2nd May 2017 appealing the PAYE/USC Balancing Statements (P21) for 2015 and 2016 issued on 12th April 2017.

Legislation and Guidelines

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

Section 1016 of the Taxes Consolidation Act 1997 [hereinafter the "TCA1997"]

"(1) Subject to subsection (2), in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.

(2) Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment."

Section 1017 of the TCA1997:

"(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment—

(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,

(b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and

(c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.

(3)Subject to subsection (4), for a year of assessment prior to the current year of assessment in which this section applies as a consequence of—

(a)an election made (including an election deemed to have been duly made) under section 1018,

(b)an election made under section 1019(2)(a)(ii), or

(c)section 1019(4)(a),

a husband or a wife who is not assessed under this section may elect to be so assessed and such election shall apply in place of any earlier election or deemed election for that year of assessment.

(4)Subsection (3) shall not apply where the husband or the wife is a chargeable person (within the meaning of section 959A)."

Section 1023 of the TCA1997:

"(1)In this section and in section 1024, "personal reliefs" means relief under any of the provisions specified in the Table to section 458, apart from relief under sections 461A, 462B and 463.

(2)Where an election by a husband and wife to be assessed to income tax in accordance with section 1017 has effect in relation to a year of assessment and, in relation to that year of assessment, an application is made for the purpose under this section in such manner and form as may be prescribed by the Revenue Commissioners, either by the husband or by the wife, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married and the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of tax shall, except where otherwise provided by those Acts, apply as if they were not married except that—

(a)the total deductions from and reliefs total income allowed to the husband and wife by means of personal reliefs shall be the same as if the application had not had effect with respect to that year,

(b)the total tax payable by the husband and wife for that year shall be the same as the total tax which would have been payable by them if the application had not had effect with respect to that year, and

(c)section 1024 shall apply.

(3)An application under this section in respect of a year of assessment may be made—

(a) in the case of persons marrying during the course of that year, before the 1 April in the following year, and

(b) in any other case, within 6 months before 1 April in that year.

(4) Where an application is made under subsection (2), that subsection shall apply not only for the year of assessment for which the application was made, but also for each subsequent year of assessment; but, in relation to a subsequent year of assessment, the person who made the application may, by notice in writing given to the inspector before 1 April in that year, withdraw that election and, on the giving of that notice, subsection (2) shall not apply for the year of assessment in relation to which the notice was given or any subsequent year of assessment.

(5) A return of the total incomes of the husband and of the wife may be made for the purposes of this section either by the husband or by the wife but, if the Revenue Commissioners are not satisfied with any such return, they may require a return to be made by the wife or by the husband, as the case may be.

(6) The Revenue Commissioners may by notice require returns for the purposes of this section to be made at any time."

Submissions

Appellant's Submissions

12. At the oral hearing of the appeal the Appellant was well prepared and spoke coherently and clearly.
13. The Appellant submitted that she had engaged with the Respondent on five different occasions requesting to be placed on "single" assessment. She outlined that she had been told by the Respondent that as she had a "W" PPS number it was not possible to process her request until she acquired a separate PPS number. The Appellant went about acquiring a separate PPS number from the Department of Social Welfare which she supplied to the Respondent on the 24th of June 2015. The Appellant submitted that when she supplied her new PPS number to the Respondent by way of telephone call she was informed that this matter was flagged and would be actioned by the Respondent.
14. The Appellant stated that she had not known that her request to be treated apart from her husband had not been processed until April 2017 when she telephoned the Respondent on another matter. This telephone call, she submitted, resulted in the P21

Balancing Statements being issued and she was left in a position where, through no fault of her own, she was left with a significant under payment of tax which she had to repay.

15. The Appellant submitted that she did not at any time try to avoid paying the tax due and owing on her income. The Appellant submitted that she had received a letter from the Respondent which accepted that the service which she had received from the Respondent had fallen far short of the standard expected, although this letter has not been submitted to the Commissioner. The Appellant was particularly annoyed by the contents of the letter from the Respondent in that it stated that "...had the full circumstances been made clearer" by the Appellant and her husband it was possible that this situation would not have arisen. The Appellant questioned how the full circumstances could have been made clearer to the Respondent when her husband's Tax Agent has written on two occasions in 2015 seeking separate treatment, her husband had written on his own behalf in January 2016 setting out the fact that he was living in the UK and she herself had supplied a new PPS number to the Respondent in June 2015 for the purpose of separate treatment.
16. The Appellant did not dispute that the under payment which was reflected in the P21 Balancing Statements for 2015 and 2016 was due and owing by her. The Appellant stated that she has repaid all of the under payment to the Respondent by way of monthly repayments and an off-set of €2,900 against medical expenses which she had claimed in subsequent years. She expressed her view that she was at all times trying her utmost to be tax compliant and that there appears to be no accountability for the fact that the Respondent did not act on her instructions thereby causing the under payment to arise.

Respondent's Submissions

17. The Respondent accepted that the facts as laid out by the Appellant are correct and that they could see where she was coming from. The Respondent submitted that on 21st May 2015 they had sent a letter to the Appellant asking her to advise them when a new PPS number had been issued to her. When asked by the Commissioner whether the Appellant supplying her new PPS number to the Respondent in June 2015 had triggered an action for the Respondent, the agents for the Respondent at the hearing stated it had not. The Respondent submitted that around that time a project to separate all "W" PPS numbers was under way and that as a result, at that time, the receipt of a new PPS number for a wife did not trigger any action on the part of the Respondent.

18. The Respondent, on being questioned by the Commissioner as to the details of the repayments made by the Appellant, submitted that the full amount has been repaid by the Appellant by way of an offset of €2,511.96 of a claim for medical expenses in 2018 and of €391.60 in 2019 making a total of €2,903.56. The balance of €3,013.27 was paid by the Appellant in monthly amounts resulting in a full repayment amount of €5,916.83 which the Appellant has made. The Respondent noted that no additional interest or penalty was collected in relation to the underpayments and that this is the only acknowledgement that could have been made that no fault lay with the Appellant in this matter.

Material Facts

19. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:

- i. The Appellant attempted to have her tax affairs separated from those of her husband which the Respondent failed to action;
- ii. As a result of the failure of the Respondent to action the Appellant's instructions under payments of tax of €5,916.83 by the Appellant arose which were reflected in the P21 Balancing Statements for 2015 and 2016 issued on 12th April 2017.

Analysis

20. The Appellant accepts that the underpayment amounts in the P21 Balancing Statements for 2015 and 2016 were due and owing and as such the fact of, and the amounts of, the under payments are not under appeal.

21. The Commissioner understands the Appellant's frustration and annoyance at the manner in which her election for separate tax treatment from that of her husband was not actioned by the Respondent. The Appellant did everything that she should have done including acquiring a new PPS number for the Department of Social Welfare and supplying same to the Respondent.

22. The Commissioner finds that the Respondent failed to action the Appellant's election that she wished to have separate treatment from her husband and again failed to action the Appellant's instruction on receipt of her new PPS number in June 2015. The Commissioner also finds that the Respondent failed to action the Appellant's husband's election that he wished to have separate treatment from the Appellant in April 2015, May 2015 and January 2016. The Commissioner was surprised that the

Respondent did not offer a fulsome apology to the Appellant at the appeal hearing for the manner in which she had been treated and that the only apology being offered at the hearing was for some errors in figures which the Respondent had submitted during the course of the hearing. The Commissioner notes that the Respondent did not apply any interest or penalties to the Appellant in relation to this matter and that this is the only acknowledgement which the Respondent can make to the Appellant that no fault lies with her.

23. 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.”

24. Having considered all of the above and in particular the fact that the Appellant accepts that the under payment occurred and that the tax reflected in the P21 Balancing Statements was due and owing by her, the Commissioner formally finds that the Appellant has not met the burden of proof to establish that the relevant tax was not payable.

Determination

25. 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 relevant tax was not payable.
26. It is understandable that the Appellant might be disappointed with the outcome of her appeal. The Appellant has found herself in a difficult and frustrating situation. The Appellant was correct to check to see whether her legal rights were correctly applied.
27. 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.



Clare O'Driscoll
Appeal Commissioner
21st March 2022