



Between

██

Appellants

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against P21 PAYE/USC Balancing Statements for 2013, 2014, 2015 and 2016 which were raised by the Revenue Commissioners (hereinafter the “Respondent”) on 19th June 2017.
2. The oral hearing took place before the Commissioner on 24th March 2022. ██████████ (hereinafter “the Appellant”) appeared in person on his own behalf and on behalf of his wife ██████████ who did not appear at the oral hearing. The Appellant was not represented by a Tax Agent. The Appellant was articulate and well-prepared. Officers on behalf of the Respondent attended the oral hearing remotely.
3. The amount of tax at issue is €9,828.77.

Background

4. The Appellant and his wife married in 2005 and from 2006 onwards were jointly assessed to tax. Following the marriage Ms ██████████ was issued with a PPS number which was linked to that of the Appellant in that it was the Appellant’s PPS number with “SP” added to the end of it. The Appellant and his wife were in receipt of married

persons' tax credits and allowances. At some time in the period between 2006 and 2013 Ms [REDACTED] was issued with her own PPS number at which time she was registered on the Respondent's system as a single individual with full single person allowances. At the same time the Appellant continued to be in receipt of his wife's personal tax credit and extended rate band which was associated with Ms [REDACTED] "SP" PPS number.

5. On 8th June 2017 the Appellant submitted his 2016 e-Form 12 tax return to the Respondent which indicated that he was claiming a full married persons allowance to include his wife's personal tax credit and extended rate band but which did not include Ms [REDACTED] income details. On 12th June 2017 Ms [REDACTED] submitted her 2016 e-Form 12 tax return to the Respondent which claimed a full single person's allowance. The receipt of these returns prompted the Respondent to carry out a review and on 19th June 2017 the Respondent issued P21 Balancing Statements to the Appellant and his wife which indicated underpayments for 2013, 2014, 2015 and 2016 totalling €9,828.77. No late penalties or interest were applied or reflected in the P21 Balancing Statements. The P21 Balancing Statements indicated that the underpayments would be collected by the Respondent reducing the tax credits assigned to the Appellant and his wife in future years. At the date of the oral hearing of this appeal the monies had been fully repaid through the mechanism of reduced tax credits.
6. A Notice of Appeal was lodged by the Appellant dated 6th July 2017 appealing the PAYE/USC Balancing Statements (P21) for 2015 and 2016 issued on 19th June 2017.

Legislation and Guidelines

7. 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

8. At the oral hearing of the appeal the Appellant was well prepared and spoke coherently and clearly.
9. The Appellant did not dispute the figures reflected in the P21 Balancing Statements under appeal. He stated that whilst all of his interactions with the Respondent had been positive and had run smoothly, he felt that the underpayments should not have to be repaid. He stated that he and his wife had submitted returns to the Respondent every year and that they were surprised when they received the P21 Balancing Statements dated 19th June 2017. He stated that, from the date of their marriage, they had always understood that they were tax compliant and that they should have been assigned the correct tax allowances when Ms [REDACTED] received her new PPS number.
10. The Appellant submitted that he has since retired on a very modest pension and that the burden of the repayment of the underpayments to the Respondent has largely fallen on his wife. In the period between the appeal being lodged with the Commission and the oral hearing the underpayments had been repaid to the Respondent and the Appellant informed the Commissioner that he had received confirmation of this on the day before the date of the oral hearing.

Respondent's Submissions

11. The Respondent submitted that the issue of incorrect allowances being assigned to the Appellant and his wife came to light when the e-Form 12 returns for 2016 were made on 8th June 2017 and 12th June 2017 respectively. They stated that a review followed receipt of the returns for 2016 and the underpayments which arose as a result of that review occurred due to the Appellant and his wife receiving the benefit of two sets of credit, one for Ms [REDACTED] “SP” PPS number and another for her new PPS number. When this issue was identified the Appellant’s record was corrected and Ms

██████ "SP" PPS number and her new PPS number were amalgamated on the Respondent's system.

12. During the course of the hearing the Respondent offered a fulsome apology for the situation which had arisen in relation to the assignment of tax allowances and credits when Ms ██████ was issued with her new PPS number. The Respondent explained that on discovering the underpayment they made a decision not to apply late penalties or interest to the underpayments. This was as an acknowledgment that the underpayments arose as a result of Ms ██████ being issued a new PPS number with full single person allowances attached thereto whilst at the same time the Appellant continued to be in receipt of the full married persons' allowances for himself and his wife. The Respondent also stated that in deciding not to apply a late payment penalty or interest they were mindful of the burden the repayment of the underpayment would have on the Appellant and his wife.

Material Facts

13. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:
- i. The Appellant and Ms ██████ married in 2005 and were jointly assessed to tax. Following the assignment of a new PPS number to Ms ██████, the Appellant inadvertently retained a full married persons tax allowance and rate bands whilst separately Ms ██████ was in receipt of an additional single persons tax allowance;
 - ii. On 19th June 2017 P21 Balancing Statements were issued for 2013, 2014, 2015 and 2016 which showed underpayments for the periods of €9,828.77. As at the date of the oral hearing of this appeal the underpayments have been fully paid.

Analysis

14. The Appellant accepts that the underpayment amounts in the P21 Balancing Statements for 2013, 2014, 2015 and 2016 were correct and that they were due and owing. As such the fact of, and the amounts of, the underpayments are not under appeal.
15. The Appellant submitted that the underpayments arose through no fault of his own or of his wife and that he feels that the underpayments should not have had to have been repaid. When asked why the Commissioner should set aside the underpayments

reflected in the P21 Balancing Statements, the Appellant accepted that all taxpayers are required to pay the correct amount of tax.

16. The Commissioner understands the Appellant's reasons for bringing the within appeal. The Commissioner accepts that the Appellant thought that he and his wife were tax compliant from the date of their marriage and that the new PPS number which was assigned to Ms [REDACTED] was the source of the problems for the Appellant and his wife. The Commissioner acknowledges the fulsome apology which the Respondent gave to the Appellant at the oral hearing and the sensitive manner in which the Respondent explained the reasons for not applying any late penalties or interest to the P21 Balancing Statements. This was the only acknowledgement which the Respondent could have made that no fault lay with the Appellant or his wife in this matter and the Commissioner acknowledges same.

17. 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."

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

Determination

19. 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 tax was not payable.

20. It is understandable that the Appellant and his wife might be disappointed with the outcome of this appeal. The Appellant has found himself in a difficult situation. The Appellant was correct to check to see whether his legal rights and those of his wife were correctly applied.

21. 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', with a stylized, cursive script.

Clare O'Driscoll
Appeal Commissioner
25th March 2022