



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 Notices of Amended Assessment for 2011, 2012, 2013 and 2014 which were raised by the Revenue Commissioners (hereinafter the “Respondent”) on 22nd and 25th April 2016.
2. The oral hearing took place before the Commissioner on 28th March 2022. Mr ██████████ (hereinafter “the Appellant”) appeared and was represented by Mr ██████████ (hereinafter the “Tax Agent”). Mr ██████████ appeared on behalf of the Respondent. The Commissioner heard oral evidence on behalf of the Appellant and submissions on behalf of the Appellant and on behalf of the Respondent.
3. The amount of tax at issue is €18,438.55.

Background

4. The Appellant and his now former wife were married and had three children namely:
 - ██████████ born on ██████████ ██████████ ██████████;
 - ██████████ born on ██████████ ██████████ ██████████

- [REDACTED] born on [REDACTED] [REDACTED] [REDACTED]

5. The Appellant and his former wife separated at some time in or around early 2009 and on [REDACTED] [REDACTED] 2009 a consent agreement was entered into between the Appellant and his former wife which provided, *inter alia*, that he was to pay €300.00 per week to his former wife into her nominated bank account. This consent agreement was then made an order of Court by the District Court on [REDACTED] [REDACTED].
6. On [REDACTED] December 2013 the Appellant and his former wife were granted a Divorce by the Circuit Court which provided, *inter alia*, the following:

“ ...

An Order for joint custody of the two dependent children [REDACTED] and [REDACTED] with access as agreed between the Parties.

An Order... directing the Applicant [the Appellant in the within appeal] to pay to the Respondent [the Appellant's now former wife] the sum of €300 per week for the support of the two dependent children of the marriage, [REDACTED] and [REDACTED].

...”

7. In his returns submitted to the Respondent for each of the years 2011, 2012 and 2013 the Appellant included claims for deductions of €15,600.00 per annum representing an amount of €300.00 per week in payments to his former wife pursuant to the District Court Order of [REDACTED] May 2009.
8. In his return submitted to the Respondent for 2014 the Appellant included a claim for a deduction of €15,600.00 representing an amount of €300.00 per week in payments pursuant to the Circuit Court Order of [REDACTED] December 2013. In addition in his return submitted to the Respondent for 2014 the Appellant included a claim for a Single Person Child Carer Credit (hereinafter the “SPCCC”).
9. By way of Notices of Amended Assessment raised on 25th April 2016, the Respondent disallowed the claims for deduction made by the Appellant for the years 2011, 2012, 2013 and 2014 and in addition disallowed the claim for the Single Person Child Carer Credit for 2014. The Notices of Amended Assessment noted the following amounts as being balances payable by the Appellant:

- 2011 €1,141.72
- 2012 €5,682.30
- 2013 €7,345.84

- 2014 €4,268.69

10. A Notice of Appeal dated 4th July 2016 was lodged on behalf of the Appellant by his Tax Agent appealing the Notices of Amended Assessment raised on 22nd and 25th April 2016 for 2011, 2012, 2013 and 2014.

Legislation and Guidelines

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

Section 462B of the Taxes Consolidation Act 1997 [hereinafter the "TCA1997"]:

"Single person child carer credit.

(1)(a)In this section—

"order", in relation to a child, means an order made by the court under section 11 of the Guardianship of Infants Act 1964 granting custody of the child to the child's father and mother jointly;

"qualifying child" in relation to any primary claimant and year of assessment means a child—

(i)who is born in the year of assessment,

(ii)who, at the commencement of the year of assessment, is under the age of 18 years, or

(iii)who, if over the age of 18 years at the commencement of the year of assessment—

(I)is receiving full-time instruction at any university, college, school or other educational establishment, or

(II)is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of such full-time instruction,

and who—

(A)is a child of the primary claimant, or

(B)not being such a child is in the custody of the primary claimant, and is maintained by the primary claimant at the primary claimant's own expense for the whole or the greater part of the year of assessment or, in respect of a child born in the year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child.

(b)This section shall apply to an individual who is not entitled to a basic personal credit referred to in paragraph (a) or (b) of section 461.

(c)This section shall not apply for any year of assessment—

(i)in the case of either party to a marriage unless—

(I)the parties are separated under an order of a court of competent jurisdiction or by deed of separation, or

(II)they are in fact separated in such circumstances that the separation is likely to be permanent,

(ii)in the case of either civil partner in a civil partnership unless the civil partners are living separately in circumstances where reconciliation is unlikely, or

(iii)in the case of cohabitants.

(2)(a)This paragraph applies to an individual (in this section referred to as the “primary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child is resident with him or her for the whole or the greater part of that year of assessment or, in respect of a child born in that year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child, provided that where a child is the subject of an order and the child resides with each parent for an equal part of the year of assessment, this paragraph shall apply to whichever of the parents referred to in that order is the recipient of the child benefit payment made under Part 4 of the Social Welfare Consolidation Act 2005.

(b)This paragraph applies to an individual (in this section referred to as the “secondary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child of a primary claimant is

resident with him or her for a period of, or periods that in aggregate amount to, not less than 100 days.

(3)Subject to subsection (5), an individual to whom subsection (2)(a) applies, shall be entitled to a tax credit (in this section referred to as a “single person child carer credit”) of €1,650.

(4)Subject to subsection (5), and notwithstanding subsection (3), where for any year of assessment a primary claimant would be entitled to a single person child carer credit but for the fact that he or she has, in the form specified by the Revenue Commissioners, relinquished his or her claim to that credit, a secondary claimant shall be entitled to claim a single person child carer credit in respect of the qualifying child concerned.

(5)A claimant under this section shall be entitled to only one single person child carer credit for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.

(6)(a)The references in subsection (1)(a) to a child receiving full-time instruction at an educational establishment shall include references to a child undergoing training by any person (in this subsection referred to as “the employer”) for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.

(b)For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.

(7)Where any question arises as to whether any person is entitled to a single person child carer credit in respect of a child over the age of 18 years as being a child who is receiving full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Skills.

(8)For the purposes of this section a child shall be treated as resident with an individual for any day where the child so resides for the greater part of that day.”

Section 1025 of the Taxes Consolidation Act 1997:

“Maintenance in case of separated spouses.

(1)In this section—

“maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

(a)the dissolution or annulment of a marriage, or

(b)such separation of the parties to a marriage as is referred to in section 1015(2),

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to relief under section 465.

(2)(a)This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for the benefit of his or her child, or for the benefit of the other party to the marriage, being payments—

(i)which are made at a time when the wife is not living with the husband,

(ii)the making of which is legally enforceable, and

(iii)which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur—

(I)the maintenance arrangement is replaced by another maintenance arrangement or is varied, and

(II)both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(b) For the purposes of this section and of section 1026 but subject to paragraph (c), a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct

the payment in computing his or her total income for the year of assessment in which the payment is made.

(4)Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

(a)the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b)the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(c)the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(d)for the purposes of section 465(6), the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that other party on the maintenance of the child.”

Submissions

Appellant's Submissions

12. The Commissioner heard sworn evidence from the Appellant at the oral hearing. He stated that he paid his former wife €300.00 per week in accordance with the 2009 District Court order and that this was paid into her bank account. He stated that as far as he was aware the monies paid pursuant to the 2009 District Court order were for his former wife's own benefit and the reason that he thought this was twofold:

(1) his former wife was not working and he saw this as income for her; and

(2) his eldest son [REDACTED] was living with him on a permanent basis and his two younger children stayed with him for three nights per week, that is to say every weekend and on Wednesday nights.

13. The Appellant stated that his son [REDACTED] lived with him on a permanent basis since the date of his separation from his former wife. He stated that in 2014 [REDACTED] was enrolled in an [REDACTED] degree in [REDACTED].
14. In addition he stated that [REDACTED] and [REDACTED] stayed with him on Wednesday, Friday and Saturday nights each week and that this would extend to Sunday nights on a bank holiday weekend. He stated that [REDACTED] and [REDACTED] spent holidays and mid-term breaks with him. He stated that they would spend Christmas and Easter with him and that during summers [REDACTED] and [REDACTED] time would be divided with him and with his former wife and that his former wife would take them on holidays. This was a flexible arrangement.
15. The Appellant stated that, in addition to the monies which he paid under the 2009 District Court Order, he also paid for all of [REDACTED] living and educational expenses since he separated from his former wife and that he paid for the majority of [REDACTED] and [REDACTED] living expenses and all of their educational expenses.
16. The Appellant stated that his former wife suffered significant mental illness which began in or around 2007. He stated that his former wife had been hospitalised for extended periods of time on four occasions, the first being in 2008. He stated that these hospitalisations lasted for 20 weeks each time and ended with a period of 4 weeks where his former wife would have a trial period of reintegration at home. He stated that for each of these periods all three of his children would reside with him on a full time basis. The Appellant stated that his former wife's illness remained unpredictable until in or around 2017 at which point her medication successfully balanced matters out and her health improved significantly. Specifically the Appellant stated that his former wife had been ill in 2014 and that it was a matter of taking things week by week. When asked by his Tax Agent whether it was reasonable to say that he had the children for 200 days in 2014 he said that he thought so although he said he was not sure of the precise dates or the amount of days involved.
17. The Tax Agent on behalf of the Appellant submitted that the wording of the 2009 District Court Order is as follows:
- "The Respondent to pay to the Applicant the sum of €300 per week, same to be paid to the Applicant's [REDACTED] Account in [REDACTED] each Friday."*
18. The Tax Agent submitted that the maintenance was paid by the Appellant largely for the benefit of his former wife and that the Appellant largely bore the costs of his children's maintenance during the period between separation and divorce. He

submitted that the Appellant's former wife's personal requirements were not catered for other than by way of the €300 per week which the Appellant paid to her on foot of the 2009 District Court Order until the finalisation of the Divorce by the Circuit Court on ■■■ December 2013.

19. In relation to the SPCCC claimed by the Appellant for 2014 the Tax Agent submitted that the real criterion to be used in considering whether the Appellant qualifies for receipt of the SPCCC is when the children were in fact with the Appellant throughout 2014. He submitted that ■■■ was with the Appellant on a full time basis in 2014 and that ■■■ and ■■■ spent Wednesday, Friday and Saturday nights each week with the Appellant. He submitted that in addition to this the Appellant would have the children for longer and extended periods to facilitate his former wife especially when she had to deal with health issues and hospitalisation. For 2014 the Tax Agent submitted that the Appellant estimates that he would have had ■■■ and ■■■ for a minimum of 200 days.

Respondent's Submissions

20. The Respondent submitted that the deductions claimed against income tax by the Appellant were disallowed because the payments made by the Appellant were child maintenance payments by Court order. The Respondent submitted that section 1025 of the TCA 1997 sets out the legislative position in this regard and that section 1025(4) of the TCA 1997 sets out the position in relation to the deductibility of child maintenance payments.
21. The Respondent submitted that there is no dispute between the parties as to the wording of the District Court order of 2009 and the wording of the Circuit Court order of 2013 made in relation to maintenance payments. It was submitted that in considering the deductions claimed by the Appellant, the Respondent looked at the matter in the round and considered both Court orders together in coming to the decision that the 2009 District Court order should be taken as meaning that the €300 per week was to be paid to the Appellant's former wife for the benefit of ■■■ and ■■■. The reason for that, he stated, was that the 2013 Circuit Court order stated that the weekly payments were to be for the benefit of the children and that this informed their interpretation of the meaning of the 2009 District Court order. When asked by the Commissioner whether that assumption would have been come to if the 2013 Circuit Court order had not been made, the Respondent replied that the Respondent might have had a different view of the meaning of the 2009 District Court order if the 2013 Circuit Court order had not been made.

22. In relation to the SPCCC claimed for 2014 by the Appellant the Respondent submitted that this was disallowed as the Appellant's former wife was the primary carer for the children and that she had not relinquished the credit in favour of the Appellant as a secondary claimant for 2014. The Respondent submitted that the Circuit Court order of 2013 granted both parents joint custody of the children and that no supporting evidence or details of the periods in 2014 when the children had been in the full-time care of the Appellant had been submitted to the Respondent.
23. The Respondent pointed out that the oral hearing was the first time that the Appellant's son [REDACTED] had been mentioned and the fact that [REDACTED] had lived full-time with the Appellant since he separated from his former wife was new information which had come to light. The Respondent did not dispute this evidence.
24. The Respondent stated that the Appellant's former wife was in receipt of a Carers Allowance from the Department of Social Welfare in 2014 and that it is difficult to believe that she would have been in receipt of this allowance if she was not the primary carer for [REDACTED] and [REDACTED] at that time.

Material Facts

25. The following are the material facts at issue in the within appeal:
- i. The payments made by the Appellant of €300 per week on foot of the District Court order made on [REDACTED] May 2009 were for the benefit of the Appellant's former wife and not for the benefit of [REDACTED] and [REDACTED];
 - ii. The payments made by the Appellant of €300 per week on foot of the Circuit Court order made on [REDACTED] December 2013 were for the benefit of the Appellant's former wife and not for the benefit of [REDACTED] and [REDACTED];
 - iii. The Appellant was the primary carer for his children in 2014.
26. The Commissioner has examined the material facts at issue.
- The payments made by the Appellant of €300 per week on foot of the District Court order made on [REDACTED] May 2009 were for the benefit of the Appellant's former wife and not for the benefit of [REDACTED] and [REDACTED]:
27. The Appellant submits that the payments of €300 per week which he made to his former wife on foot of the 2009 District Court order were for the benefit of his former wife and that he is therefore entitled to claim a deduction for same for 2011, 2012 and 2013. On the other hand the Respondent submits that, reading both Court orders from

2009 and 2013 together, the payments made by the Appellant were made to the Appellant's former wife for the benefit of [REDACTED] and [REDACTED].

28. The Commissioner has considered the relevant text of the 2009 District Court order which is as follows:

"The Respondent to pay to the Applicant the sum of €300 per week, same to be paid to the Applicant's [REDACTED] Account in [REDACTED] each Friday."

29. The Commissioner has also considered that the 2009 District Court order was a consent agreement which the Appellant and his former wife entered into on foot of legal advice from their respective legal representatives. The wording of the order is specific and states that the weekly payment was to be made by the Appellant to his former wife. The wording of the order does not state that payments were to be for the benefit of the children. The Commissioner sees no basis on which the wording of the order should be expanded or amended to give it a different expanded or amended meaning. The Commissioner notes that the consent agreement was specifically drafted by the Appellant's and his former wife's legal representatives who would have advised each party as to the implications of same.

30. The Commissioner notes the candour of the Respondent's confirmation that they might not have come to the decision that the 2009 District Court order meant that the weekly payments were for the benefit of the children and not for the Appellant's former wife if the 2013 Circuit Court order had not been made. The Commissioner appreciates this and commends the Respondent for same.

31. Having considered all of the above, the Commissioner finds that the payments made by the Appellant of €300 per week on foot of the District Court Order made on [REDACTED]^h May 2009 were for the benefit of the Appellant's former wife and not for the benefit of [REDACTED] and [REDACTED]. Therefore this material fact is accepted.

The payments made by the Appellant of €300 per week on foot of the Circuit Court Order made on [REDACTED] December 2013 were for the benefit of the Appellant's former wife and not for the benefit of [REDACTED] and [REDACTED];

32. The Appellant submits that the payments of €300 per week which he made to his former wife on foot of the 2013 Circuit Court order were for the benefit of his former wife and that he is therefore entitled to claim a deduction for same. On the other hand the Respondent submits that the wording of the 2013 Circuit Court order means that the payments were for the benefit of [REDACTED] and [REDACTED].

33. The Commissioner has considered the relevant text of the 2013 Circuit Court Order which is as follows:

“An Order pursuant to Section 8 of the 1995 Act directing the Applicant to pay to the Respondent the sum of €300 per week for the support of the dependent children of the marriage [REDACTED] and [REDACTED]. Said sum to be discharged by the Applicant to the Respondent into the Respondent’s nominated Bank Account.”

34. The Appellant submits that because the access arrangements which meant that the children were with him on Wednesday, Friday and Sunday nights and, because of his former wife’s illness, the children resided with him for a significant amount of time in 2014 . He also submits that he contributed for most of the children’s living expenses. As a result, he submits, the payments made to his former wife on foot of the 2013 Circuit Court order should be viewed as being for the benefit of his former wife as he contends that most of this money was not used for the benefit of the children. On the other hand the Respondent submits that the wording of the 2013 Circuit Court order means that these payments were for the benefit of the children.

35. In a similar manner as the finding for the payment made by the Appellant on foot of the 2009 District Court Order, the Commissioner sees no basis on which the wording of the 2013 Circuit Court order should be amended to give it a different meaning. This order was made in the context of the Circuit Court judge granting the parties a divorce and other ancillary financial orders. The wording of the order is clear and unequivocal that the payments to be made on foot of the 2013 Circuit Court order were for the benefit of the children and not for the benefit of the Appellant’s former wife. The Commissioner notes that on cross examination by the Respondent the Appellant stated that in his mind the payments made on foot of the 2013 Circuit Court order were qualitatively different that those he had been making before this order was made.

36. Having considered all of the above, the Commissioner finds that the payments made by the Appellant of €300 per week on foot of the Circuit Court Order made on [REDACTED] December 2013 were for the benefit of [REDACTED] and [REDACTED] and not for the benefit of the Appellant’s former wife. Therefore this material fact is not accepted.

The Appellant was the primary carer for his children in 2014:

37. The Appellant submits that he was the primary carer for his children in 2014. The Appellant gave very clear evidence that his son [REDACTED] lived with him on a full-time basis since he separated from his former wife. The Commissioner notes that the hearing of the within appeal was the first time that [REDACTED] and his living arrangements

had been mentioned by the Appellant although the Commissioner also notes that the Respondent indicated that they accepted the Appellant's evidence in this regard.

38. In relation to [REDACTED] and [REDACTED] the Commissioner notes that the Appellant gave evidence that both children would stay with him every week on Wednesday after school until Thursday morning and also on Friday and Saturday nights returning to their mother on Sunday evening or on Monday evening on a bank holiday weekend. The Commissioner notes that there were six bank holidays which fell on a Monday in 2014 being St Patrick's Day, Easter Monday, 5th May, 2nd June and 4th August. Taking these dates and the Appellant's evidence into consideration the Commissioner finds that [REDACTED] and [REDACTED] were in the primary care of the Appellant for 162 days in 2014 based on these dates alone.
39. The Appellant was then asked by his Tax Agent to give evidence as to any other times when he would have had [REDACTED] and [REDACTED] in 2014 and he stated that he would have had them for Christmas, Easter and summer holidays although he did not give evidence of any specific dates or arrangements. He stated under cross examination that his wife's health improved in 2014 and that she was not hospitalised during that year although she still suffered from ill health from time to time. As a result of this he stated that the access arrangements for [REDACTED] and [REDACTED] were more fluid and that if his former wife was unwell they would come to him. The Appellant did not give specific detail or dates in relation to this additional access.
40. As with any taxation appeal, the burden of proof rests with the Appellant who must prove on the balance of probabilities that the disputed tax is not payable as set out by Charleton J. in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49.
41. The Commissioner notes the evidence of the Appellant that he had [REDACTED] and [REDACTED] in the normal course of 2014 for 162 days plus Christmas, Easter and summer holidays. Given the inability of the Appellant to provide specific dates when [REDACTED] and [REDACTED] were with him during the holidays the Commissioner finds that the Appellant has not discharged the burden of proof in this regard and finds that the Appellant was not the primary carer for [REDACTED] and [REDACTED] for 2014.
42. The Commissioner accepts that [REDACTED] was living with the Appellant on a full-time basis in 2014. Therefore the Commissioner finds that the Appellant was the primary carer for [REDACTED] only and not for [REDACTED] and [REDACTED] for 2014.

Analysis

Payments made by the Appellant in 2011, 2012, 2013 and 2014:

43. Section 1025(1) defines a maintenance arrangement as meaning:

“... an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

(a) the dissolution or annulment of a marriage, or

(b) such separation of the parties to a marriage as is referred to in section 1015(2),

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;”

44. Section 1025(1) defines a payment as meaning:

“...a payment or part of a payment, as the case may be;”

45. Section 1025(3)(c) of the TCA 1997 provides that payments made on foot of a maintenance arrangement to a party to a marriage may be deducted as follows:

“(3) Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

...

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.”

46. Section 1025(4)(c) of the TCA 1997 provides that payments made for the benefit of a child may not be deducted as follows:

“(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the

marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

...

(c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made,”

47. 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.”

48. The Commissioner has accepted that the payments made by the Appellant of €300 per week on foot of the District Court Order made on ■■■ May 2009 were for the benefit of the Appellant's former wife and not for the benefit of ■■■ and ■■■. Therefore the provisions of section 1025(3)(c) of the TCA 1997 apply.

49. The Commissioner finds that the Appellant made payments of €15,600 to his former wife for each of the years 2011 and 2012 and that he is entitled to claim a deduction for same pursuant to section 1025(3) of the TCA 1997.

50. The Commissioner notes that the provisions of the 2009 District Court Order ended on ■■■ December 2013 when the Circuit Court made its order. The Commissioner finds that the Appellant made payments totalling €14,700 to his former wife in 2013 on foot of the 2009 District Court order, those being payments up to and including ■■■ December 2013 representing 49 weeks and that he is entitled to claim a deduction for same pursuant to section 1025(3) of the TCA 1997.

51. The Commissioner has already found that the payments made by the Appellant from the date of the 2013 Circuit Court order were for the benefit of the children and not the Appellant's former wife. Therefore the provisions of 1025(4) of the TCA 1997 apply and the Commissioner finds that Appellant is not entitled to claim a deduction for these payments.

Appellant's claim for SPCCC for 2014:

52. Section 462B(1)(a) of the TCA 1997 relates to the SPCCC and makes the following definitions:

“ “order”, in relation to a child, means an order made by the court under section 11 of the Guardianship of Infants Act 1964 granting custody of the child to the child’s father and mother jointly;

“qualifying child” in relation to any primary claimant and year of assessment means a child—

...

(iii)who, if over the age of 18 years at the commencement of the year of assessment—

(I)is receiving full-time instruction at any university, college, school or other educational establishment, or

...

and who—

(A)is a child of the primary claimant, or

...”

53. Section 462B(1)(c) of the TCA 1997 provides that:

“(c)This section shall not apply for any year of assessment—

(i)in the case of either party to a marriage unless—

(I)the parties are separated under an order of a court of competent jurisdiction or by deed of separation, or

...”

54. Section 462B(2)(a) of the TCA 1997 provides as follows:

“This paragraph applies to an individual (in this section referred to as the “primary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child is resident with him or her for the whole or the greater part of that year of assessment or, in respect of a child born in that year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child, provided that where a child is the subject of an order and the child resides with each parent for an equal part of the year of assessment, this paragraph shall apply to whichever of the parents referred to in that order is the recipient of the

child benefit payment made under Part 4 of the Social Welfare Consolidation Act 2005.”

55. Section 462B(3) of the TCA 1997 provides as follows:

“Subject to subsection (5), an individual to whom subsection (2)(a) applies, shall be entitled to a tax credit (in this section referred to as a “single person child carer credit”) of €1,650.”

56. The Commissioner has already accepted that the Appellant’s son [REDACTED] was resident on a full-time basis with the Appellant in 2014. The Commissioner notes the Appellant’s evidence that at that time [REDACTED] s in full-time education undergoing an [REDACTED] Degree in [REDACTED].

57. The Appellant has proven to the satisfaction of the Commissioner that [REDACTED] was resident with him for the whole of 2014 and the Commissioner is satisfied that the Appellant is a primary claimant for the purposes of section 462B of the TCA 1997 in relation to [REDACTED].

58. The Commissioner is satisfied that [REDACTED] was a qualifying child as defined in section 462B of the TCA 1997 in that he was over 18 years of age and was in receipt of full time instruction at [REDACTED] and that he was a child of the Appellant the primary claimant.

59. The Commissioner is satisfied that the Appellant was separated from his former spouse in 2014 for the purposes of section 462B(1)(c) of the TCA 1997 on the basis that the Circuit Court order of [REDACTED] December 2013 granted the Appellant and his former wife a divorce.

60. As a result of the above the Commissioner finds that the Appellant is an individual to whom section 462B(2)(a) applies and as a result the Commissioner finds that the Appellant was entitled to a Single Person Child Carer Credit as set out in section 462B(3) of the TCA 1997.

Determination

61. For the reasons set out the Commissioner determines that the Appellant has succeeded in his appeal as follows:

61.1 The Appellant is entitled to a deduction in respect of the payments of €15,600 made by the Appellant in each of the years 2011 and 2012;

61.2 The Appellant is entitled to a deduction in respect of the payment of €14,700 in 2013; and

61.3 The Appellant is entitled to claim the SPCCC for 2014.

62. The Commissioner therefore determines that, pursuant to section 949AK(1)(a) of the TCA 1997, the Notices of Amended Assessment raised by the Respondent on 22nd and 25th April 2016 shall be reduced.

63. The Commissioner commends the Appellant and his Tax Agent along with the Respondent for the manner in which they conducted this appeal.

64. 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
30th March 2022