



82TACD2022

Between



**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of a decision of the Revenue Commissioners (“the Respondent”) of 28 January 2020, whereby it refused the Appellant’s claim for a deduction in the computation of income tax under section 1025 of the Taxes Consolidation Act 1997 (“the TCA 1997”). The deduction claimed is in respect of court ordered maintenance payments made by the Appellant for the benefit of his child for the years 2017, 2018 and 2019 (“the relevant tax years”).
2. The Appellant filed his notice of appeal on 27 February 2020. The appeal proceeded by way of oral hearing, which took place on 14 March 2022.

**Background**

3. By way of District Court Order dated [REDACTED] the Appellant was required to pay maintenance to his wife for the benefit of their child in the amount of [REDACTED] per week.
4. For each of the relevant tax years the Appellant made a claim on his tax return to deduct from his total income the annual amount of these child maintenance payments.

5. In June 2019 the Respondent commenced a compliance intervention in respect of the Appellant. In response to a request from the Respondent, the Appellant provided a copy of the District Court order requiring him to pay maintenance. Having received this, the Respondent notified the Appellant that he was not entitled to the deductions claimed on the grounds that the maintenance payments, although made to his spouse, were expressly for the benefit of their child. Such payments, the Respondent said, are excluded from the tax relief in respect of maintenance provided for under section 1025 of the TCA 1997. Revised statements of liabilities duly issued and thereafter the Appellant appealed to the Commission against the decision refusing the deduction.

### **Legislation and Guidelines**

6. Section 1025 of the TCA 1997 is entitled “*maintenance in the case of separated spouses*”. Subsection (1) therein defines a “*maintenance arrangement*” as:-

*“...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)...”*

7. Section 1025(3) of the TCA 1997 concerns payments made by one separated spouse for the benefit of the other. It provides:-

*“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.”*

8. Section 1025(4) of the TCA 1997, which is the key subsection concerning maintenance payments made for the benefit of a child, provides:-

*“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 of the Parties**

9. Both parties made brief oral submissions on the day of the hearing, in addition to written arguments furnished in advance.
10. There was no disagreement between the parties as regards the meaning and effect of the legislation itself. The entitlement to tax relief in respect of maintenance payments made for the benefit of another spouse arises from section 1025(3)(c) of the TCA 1997. This allows those who have been ordered by a court to pay maintenance to their spouse to deduct the amount in question from the figure representing their total income.
11. By direct contrast, section 1025(4) of the TCA 1997 provides that the total income of a spouse who makes a payment for the benefit of a child shall be computed “...as if the payment had not been made”. In other words, it cannot be deducted in the manner allowed under section 1025(3)(c) of the TCA 1997.

12. From the evidence given by the parties, it appears that at the time of the making of the Appellant's claim for the deductions the relevant part of the online form concerning "maintenance payments" stated that these were "*any legally enforced maintenance payments*". It appears that the online form did not specify that the right to a deduction under section 1025 of the TCA 1997 was limited to such maintenance payments made by one spouse for the benefit of another spouse. In particular, it did not specify that a deduction could not be claimed in respect of those payments made for the benefit of a child.
13. At the same time, however, it appears that other parts of the Respondent's website, and its online Tax and Duty Manual, did contain guidance to the effect that maintenance payments for the benefit of a child could not be deducted for the purpose of the computation of total income.
14. The Appellant submitted that the claimed deduction should be allowed because the online return form did not clarify that a deduction could not be claimed in respect of payments made to his wife for the benefit of their child. The information provided on the form stressed only the need for the maintenance payments to be consequent to an order of court, which requirement his payments satisfied.
15. The Appellant said that it was not enough that the information was located elsewhere on the website. He said that he completed the return based on the information and instructions provided therein in good faith and to the best of his ability. The mistake was one that was attributable to the Respondent and it was unjust that it should lead to a liability on his part at a later point. Although the precise language of the law of legitimate expectation was not used by the Appellant, his argument was, in essence, that the Respondent could not resile from what he said was the implication of the information provided on the part of the form relating to maintenance payments.
16. The Respondent submitted that the provision governing the taxation of maintenance payments is clear in its meaning. While deductions in computing taxable income are permitted under section 1025(3)(c) of the TCA 1997, the subsequent subsection concerning payments for the benefit of a child states that such a payment shall have no effect on the computation of the paying spouse's total income. The Respondent emphasised that there was no suggestion whatever of impropriety on the part of the Appellant. However, it was incumbent on the Respondent to apply the law as enacted, despite the honest belief of the Appellant. As such, the decision to refuse should stand.

## Material Facts

17. The following are the facts material to this appeal:-

- the Appellant made maintenance payments for the relevant tax years to his spouse for the benefit of their child in the sum of [REDACTED] per week for each tax year. This was pursuant to a District Court Order of [REDACTED]
- the Appellant filed returns which deducted from his total income for the relevant tax years the amounts paid in respect of child maintenance;
- following a compliance intervention and the provision of the relevant District Court Order to the Respondent, it was determined that the Appellant was not entitled to the deductions claimed. Thereafter the Respondent issued balancing statements to the Appellant;
- the Appellant appealed the decision of the Respondent to refuse relief under section 1025 of the TCA 1997 to the Commission;

## Analysis

18. The jurisdiction of the Commissioner is confined by statute to determining the amount of tax that is properly owned under relevant tax legislation based on the findings of fact made by the Commissioner or on facts that are not in dispute (see *Menolly Homes Ltd. v The Appeal Commissioners [2010] IEHC 49* and *Lee v The Revenue Commissioners [2021] IECA 18*). The Commissioner is not empowered to make a determination that is not in accordance with tax legislation enacted by the Oireachtas. It has no power to consider whether a decision was fair or unfair or whether a taxpayer might have a legitimate expectation based on a representation, express or implied, by the Respondent that it would allow a claim that does not conform to the provisions of tax legislation.

19. The meaning of section 1025(4) of the TCA 1997 and its application to the facts of the Appellant's case is clear. Court ordered payments made by one spouse to the other for the benefit of their child cannot effect the computation of the paying spouse's total income. This is consistent with subsection (b) therein that provides that the income paid will not be treated as income of the recipient child. In other words, a deduction cannot be allowed.

20. This is in direct contrast with 1025(3) of the TCA 1997, which expressly allows the paying spouse to claim a deduction in respect of a sum in maintenance paid pursuant to a court order for the benefit of the other spouse. Moreover, pursuant to subsection (d) therein the money received is then treated as a profit or gain accruing to the recipient spouse and taxed accordingly.

## **Determination**

21. There is no dispute in this appeal that the court ordered payments in respect of which the Appellant claimed a deduction were for the benefit of his child and not his spouse. The Appellant is aggrieved regarding the information provided on the online return form. This is understandable and the Appellant was correct to appeal the determination of the Respondent so as to ascertain the true position regarding his liability to tax. However, it is the job of the Commissioner under statute to apply section 1025 of the TCA 1997 in accordance with its meaning intended by the Oireachtas. In this instance it is clear that subsection (4) therein governing the taxation of court ordered child maintenance payments does not allow the Appellant to claim the deduction of the sums paid in respect of the computation of his total income for the relevant tax years. Consequently, the decision of the Respondent must stand.
22. This appeal has been determined in accordance with section 949AL TCA 1997. The determination contains full findings of fact and reasons. 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.



Conor O'Higgins  
Appeal Commissioner  
Date 11<sup>th</sup> April 2022