



Between

152TACD2023

████████████████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

---

**Determination**

---

**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against the refusal of the Revenue Commissioners (“the Respondent”) to waive a tax liability of €6,086.79 for the tax years 2020 and 2021.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), this appeal is determined without a hearing.

**Background**

3. The Appellant and his wife were taxed under joint assessment, with the Appellant being the assessable spouse. On ██████████ 2019, the Appellant’s wife died. The Appellant stated that he notified the Department of Social Welfare immediately, and payments on his wife’s old age pension were immediately stopped. However, he continued to be jointly assessed for the purposes of tax.
4. The Appellant was assessed to have a tax liability of €3,005 for 2020 and €3,081.79 for 2021. On 2 February 2023, the Respondent wrote to the Appellant to confirm that he had an outstanding tax balance for 2020 and 2021. On 9 February 2023, the Appellant

appealed the Respondent's decision, and its refusal to waive the liability, to the Commission.

5. On 7 June 2023, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice. No objection was received from either party. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

## **Submissions**

### *Appellant*

6. In his Notice of Appeal, the Appellant stated *inter alia* that

*"The Respondent] continued to apply the tax credits for 2020 and 2021 as if [REDACTED] my wife was still alive.*

*As a result of numerous phone calls from me further tax credits were issued which all were incorrect. It wasn't until June 2022 that the correct credits were issued to my pension provider.*

*On each of the many occasions I was assured a manager would contact me to discuss the arrears and a solution. I have never been contacted.*

*As the entire arrears have been caused by repeated failures on their part over a prolonged period of more than 2 years I feel strongly that the arrears for y/e 2021 should be waived."*

7. In his Statement of Case, the Appellant stated *inter alia* that

*"The reason for the appeal is that arrears of tax totalling €6087.18 for the tax years 2020 and 2021 arose entirely and solely due to Revenue negligence to act on information relevant to my tax credits which had been supplied by me and was on their records since [REDACTED] 2019. Despite letters and numerous phone promises that I would be contacted by an empowered official from December 2021 when the issue became known to me. No promised contacts ever occurred.*

*[...]*

*I have found the whole experience since December 2021 extremely stressful and continue to do so. I have already made arrangements to meet approximately half the*

*arrears and would find it very difficult to undertake any additional spread or lump sum payment in respect of this debt.”*

8. In response to certain queries put to the Respondent by the Commissioner, the Appellant stated *inter alia* that

*“My appeal is against the liabilities for years 2020 and 2021 amounting to €6086.97. This was always the intention as the arrears for both years were caused by the Respondent's failure to apply the correct tax credits for both these years.*

*[The] Respondent's self-justification is that I was advised to check the accuracy of their figures.*

*That the responsibility for the accuracy of their figures should be mine and not theirs is totally unreasonable and unacceptable as a business policy. It is totally at variance with normal [conventional] business practice.*

*[...]*

*I had been ■ years on joint assessment. [The] Respondent seems to have no awareness of the profound trauma on the survivor of the death of a spouse. It is unreasonable for Respondent to expect the surviving spouse to be au fait with transitional tax provisions on death or to have the coping ability to acquire such knowledge at the time.*

*[...]*

*This issue has caused considerable stress and anxiety to me over a prolonged period. This aspect has been compounded by the non-engagement by the Respondent at any time despite many promises to do so. I do not know if it is within your remit to recommend a review of current Revenue administrative policy and practice, particularly with regard to tax structure changes on death when survivors need focused helpful assistance.”*

*Respondent*

9. In its Statement of Case, the Respondent stated *inter alia* that

*“The Appellant’s 2021 tax return and liability of €3,081.79 has been reviewed and it is found that the tax credits and rate bands have been correctly applied.”*

10. In response to queries put to it by the Commissioner, the Respondent stated *inter alia* that

*“The amount of €6,086.79 included in the Appellant’s Notice of Appeal can be broken down to the tax liabilities of €3,005 assessed in respect of 2020 and €3,081.79 assessed in 2021. It was unclear from the Notice of Appeal exactly what period the Appellant was appealing as he listed 2023 as the year the Assessment / Decision related to. However, in Section 5 of the Notice of Appeal – Grounds for Appeal, the Appellant states that he is seeking that the 2021 tax liability, i.e. €3,081.79, is waived. It was understood by Revenue that the Appellant is appealing the liability for 2021 only and not 2020 and 2021.*

*[...]*

*The 2021 tax liability arose because the Appellant continued to be taxed at source on a joint assessed basis. His Tax Credit Certificate for the period 1st January 2021 to 31st December 2021 issued to the Appellant on the 3rd December 2020 (copy attached for information). It states in paragraph 1 to “Please check the information overleaf is up to date and accurate”. The Tax Credits detailed on page 2 are*

*Personal Tax Credit - €3,300*

*Employee Tax Credit - €1,650*

*Age Tax Credit - €490.*

*The Personal Tax Credit in 2021 was €1,650 and the Personal Tax Credit for a jointly assessed couple was €3,300. In addition to this, the Tax Credit Certificate also allowed the increased rate band of €44,300, the Standard Rate Cut off Point for a single/separated/widowed person in 2021 was €35,300. A simplified version of the Tax Credit Certificate is sent to a taxpayers Employer / Pension Provider and they apply tax based on it.*

*In the Appellant’s Statement of Case he states that he contacted Revenue on the 9th December 2021 to get the correct credits applied. According to our records the Appellant did ring Revenue on the 9th December 2021 and subsequently wrote to the Department on the 14th December 2021 in order to have the correct credits applied. This would have been shortly after the Appellant received his 2022 Tax Credit Certificate (issued 1st December 2021). This Tax Credit Certificate was similar to the 2021 Tax Credit Certificate in that it continued to apply credits to the Appellant as if he was jointly assessed.*

*When the Appellant contacted Revenue in December 2021 all of his income had been taxed at source in line with the 2021 Tax Credit Certificate (i.e. married on the basis of*

*joint assessment) and insufficient tax had been remitted to Revenue. It only became apparent of the extent of his tax liability when the Appellant filed his 2021 Income Tax return in October 2022.”*

### **Material Facts**

11. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

11.1. The Appellant and his wife were taxed under joint assessment, with the Appellant being the assessable spouse.

11.2. The Appellant's wife died on [REDACTED] 2019. The Appellant immediately notified the Department of Social Welfare of her death.

11.3. The Respondent was not notified of the death of the Appellant's wife until December 2021. As a result, the Appellant continued to be taxed on a joint assessment basis for 2020 and 2021. This resulted in an underpayment of tax in the amount of €3,005 for 2020 and €3,081.79 for 2021.

### **Analysis**

12. The starting point is to confirm that the burden of proof in this appeal rests on the Appellant, who must show that the Respondent's decision to impose the additional liability for 2020 and 2021 is incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

13. While there was initially some confusion regarding the years in respect of which the Appellant wishes to appeal, he subsequently confirmed that he wished to appeal the liabilities for 2020 and 2021. The Commissioner is satisfied that it is appropriate, in the circumstances, to deal with both tax years in this appeal.

14. The additional liabilities arose following the death of the Appellant's wife in [REDACTED] 2019. The Appellant and his wife had been jointly assessed to tax, with the Appellant being the assessable spouse. The Commissioner accepts the evidence of the Appellant that he immediately notified the Department of Social Welfare of his wife's death, and that her pension was then stopped. However, unfortunately it appears that the Respondent was not notified until December 2021.

15. It goes without saying that the Commissioner has considerable sympathy for the Appellant in this case. He fully accepts that the Appellant found the period after his wife's death distressing, and that he has subsequently found his dealings with the Respondent frustrating and stressful.
16. However, while the Commissioner is very sympathetic to the Appellant, it is important to bear in mind the limitations on his jurisdiction, which is focused on "*the assessment and the charge*", as stated by Murray J at paragraph 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the Appellant has demonstrated that the Respondent's imposition of the additional liabilities for 2020 and 2021 were incorrect.
17. Unfortunately, the Commissioner is not satisfied that the Appellant has demonstrated that the Respondent acted incorrectly in imposing the liabilities. The Respondent can only act on the information it has been given, and it appears to the Commissioner, on the basis of the documentation before him, that the Respondent was not notified of the Appellant's wife's death until December 2021. Consequently, the Appellant continued to be jointly assessed to tax for 2020 and 2021, which resulted in the underpayment of €3,005 in 2020 and €3,081.79 in 2021.
18. The Commissioner is of the view that the onus rests on taxpayers to ensure that their details are correct. The Respondent provided the Commission with a copy of the Appellant's tax credit certificate for 2021 (dated 3 December 2020) which advised the Appellant "*Please check the information overleaf is up to date and accurate*", and similar warnings are typically contained on all tax credit certificates. In this regard, the Commissioner notes the comments of Gilligan J in *TJ v Criminal Assets Bureau* [2008] IEHC 168 (as quoted in *Menolly Homes*) that "*it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant.*" Therefore, the onus rested on the Appellant to inform the Respondent of his wife's death at the earliest possible opportunity. The Commissioner has no jurisdiction to direct the Respondent to waive the additional liability, on compassionate or any other grounds.
19. The Appellant has provided details of his engagement with the Respondent and has expressed his unhappiness regarding the level of service provided to him. However, as previously stated, the Commissioner's jurisdiction is confined to considering whether the imposition of the liabilities for 2020 and 2021 was incorrect. He has no wider jurisdiction or power to consider the circumstances surrounding the parties' engagement; however,

he appreciates the frustration the Appellant felt at a most stressful time of his life. The Commissioner would expect that the Respondent, and any other public body, would treat a vulnerable taxpayer such as the Appellant with all due attention and courtesy.

20. In conclusion, the Commissioner is very sympathetic towards the Appellant in this instance. However, he is satisfied that the Respondent correctly imposed the additional liabilities for 2020 and 2021. Therefore, the appeal is not upheld.

### **Determination**

21. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in stating that the Appellant had an underpayment of income tax in the amount of €3,005 for 2020 and €3,081.79 for 2021.
22. The appeal is hereby determined in accordance with section 949U of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone  
Appeal Commissioner  
13 September 2023