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BETWEEN/

████████████████████

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against PAYE/USC end of year statements for 2014 to 2017, totalling €2,505.
2. The Appellant's position is that his former employers ██████████ failed to remit the correct quantum of tax to the Respondent on his behalf and that his former employers are liable to pay and discharge the outstanding tax. The Respondent's position is that an underpayment of tax arises as employer tax deductions from the Appellant's remuneration were not sufficient based on the Appellant's total income for the relevant tax years of assessment.
3. The Respondent stated that the Appellant's employers had remitted all tax deducted, in accordance with their respective employer obligations but that tax was under deducted based on the Appellant's total income for each of the relevant tax years of assessment. The Respondent's officials, pursuant to their statutory duties and obligations, assessed the Appellant to tax on the basis that the Appellant was liable to discharge the outstanding tax in accordance with regulation 28(3) of the Income Tax (Employments) (Consolidated) Regulations, 2001, statutory

instrument no. 599/2001, which provides that the Revenue Commissioners may recover the amount of an under-deduction from an employee in certain circumstances, namely, where they are satisfied that the employer took reasonable care to comply with the regulations and that the under-deduction arose due to an error made in good faith.

Facts/Background

4. The Appellant submitted that the Respondent, in seeking to recover tax from the Appellant by means of the end of year statements, subjected him to tax twice on the same income for the relevant tax years of assessment. The Appellant in his notice of appeal stated:

'I am appealing Revenue's decision to tax me on earnings twice. Two companies I was employed by failed to remunerate PAYE taxes deducted from my wages in every paypath. Underpayments of tax were applied to me unlawfully.

..... I am appealing tax underpayments applied to me because two companies I worked for [REDACTED] did not remunerate P.A.Y.E. taxes deducted from me at source, to revenue. This is effectively double taxation.'

5. In his statement of case, the Appellant stated that his employers deducted tax from his wages but did not remit that tax to the Revenue Commissioners. Again, he reiterated that through the Respondent's demand for tax, he was being required to pay the tax twice and that this was unlawful. The Appellant's position was that his employers were the persons liable to pay the outstanding tax and that he was not liable nor responsible for payment of the tax.
6. The Respondent stated that the underpayments of tax arising in relation to the Appellant's tax affairs did not arise as a result of a shortfall in the remittance of taxes by either [REDACTED] or [REDACTED]. The Respondent confirmed that the Appellant received the benefit of the remittances made and that there was no shortfall in the sums credited to him by the Respondent, based on the remittances.
7. The Respondent submitted that when [REDACTED] were given a tax credit certificate ('TCC') by the Appellant they were entitled to operate payroll using this on a week 1 basis however, they incorrectly operated the Appellant's payroll on a cumulative



basis. There was no suggestion that this error amounted to anything other than an error in good faith. The [REDACTED] payroll was corrected to a week 1 basis for the tax years of assessment 2014, 2015 and 2016 following an investigation by the joint investigations unit (JIU) in August 2018. On that basis, following the investigation, the Respondent was satisfied that [REDACTED] had met their employer obligations. All tax remitted was credited to the Appellant. However, there remained an underpayment of tax, based on the Appellant's total income for the relevant tax years of assessment.

8. The Respondent submitted that the under deduction in 2016 arose from the Appellant's employment with [REDACTED] as [REDACTED] did not operate the updated P2C issued in November 2016 which led to the overall under payment of tax. The Respondent submitted that in 2017, an under deduction arose in the [REDACTED] employment as [REDACTED] did not implement the P2Cs that were issued to them. In addition, by correspondence dated 25 January, 2023, the Respondent instructed that social welfare benefits of €694 were included and subject to tax.

Legislation

9. The applicable legislation (relevant extracts of which are set out below) is as follows;
 - section 986(1) of the Taxes Consolidation Act 1997, as amended ('TCA 1997')
 - Part 42, Chapter 4 (sections 983-997A) TCA 1997.
 - Regulation 28(3) of the Income Tax (Employments) (Consolidated) Regulations, 2001, statutory instrument no. 599/2001

Submissions in brief

Appellant's submissions

10. The Appellant's position was that the Respondent should have pursued his employers for the outstanding taxes because, in view of the Appellant, his employers failed to remit taxes on his behalf to the Revenue Commissioners. The Appellant submitted that any attempt to recover these taxes from the Appellant amounted to double taxation which, in view of the Appellant was unlawful, unfair and contrary to the Respondent's code of practice.



Respondents' submissions

11. The Respondent submitted that the underpayments of tax arising in relation to the Appellant's tax affairs did not arise as a result of a shortfall in the remittance of taxes by either ■■■■ or ■■■■. The Respondent confirmed that the Appellant received the benefit of the remittances made and that there was no shortfall in the sums credited to him by the Respondent, based on the remittances. The Respondent submitted that the underpayment of taxes arose due to under deduction of tax by the Appellant's employers.
12. The Respondent sought to recover the outstanding tax pursuant to regulation 28(3) of the Income Tax (Employments) (Consolidated) Regulations, 2001, statutory instrument no. 599/2001, which provides that the Revenue Commissioners may recover the amount of the under-deduction from an employee in certain circumstances, namely, where they are satisfied that the employer took reasonable care to comply with the regulations and that the under-deduction arose due to an error in good faith.

Analysis

13. The collection and recovery of income tax on emoluments is provided for in Part 42, Chapter 4 (sections 983-997A) TCA 1997. Section 985 TCA 1997 (method of collection) places an obligation on the employer to deduct and remit tax to the Respondent. The section provides;

'On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this Chapter, be deducted or repaid by the person making the payment notwithstanding that -

- (a) When the payment is made no assessment has been made in respect of the emoluments, or*
- (b) The emoluments are in whole or in part emoluments for some year of assessment other than that during which the payment is made*



14. Section 986 (Regulations) provides for the making of regulations which allow for the collection and recovery of tax from the employee in certain circumstances:

(1) 'The Revenue Commissioners shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Chapter applies or of income tax for any previous year of assessment remaining unpaid, and those regulations may, in particular and without prejudice to the generality of the foregoing, include provision –

....

(1) for the collection and recovery, from the employee rather than from the employer of any amount of tax that the Revenue Commissioners consider should have been deducted by the employer from the emoluments of the employee;

15. Regulation 28(3) of the Income Tax (Employments) (Consolidated) Regulations, 2001, statutory instrument no. 599/2001, provides that the Revenue Commissioners may recover the amount of the under-deduction from an employee in certain circumstances, namely, where they are satisfied that the employer took reasonable care to comply with the regulations and that the under-deduction arose due to an error made in good faith. Regulation 28(3) provides; *(3) If the amount which the employer is liable to remit to the Collector-General under paragraph (1) of this Regulation exceeds the amount actually deducted by the employer from emoluments paid during the relevant income tax month, the Revenue Commissioners, on being satisfied that the employer took reasonable care to comply with the provisions of these Regulations and that the under-deduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the employee, and where they so direct, the employer shall not be liable to remit the amount of the excess to the Collector-General.*

16. In 2014 and 2015, ██████ were entitled to apply the Appellant's tax credit certificate (TCC) using a week 1 basis of calculation *i.e.* a non-cumulative basis. However, ██████ incorrectly operated payroll on a cumulative basis. Following a joint investigation unit ('JIU') investigation in August 2018, amendments were made to ██████ employment record with the Appellant, and all remittances due to the



Appellant were credited to him. However, an underpayment arose in 2014 and in 2015 as the amount of tax collected in the [REDACTED] employment was insufficient taking into account other employments falling within the tax years of assessment.

17. An underpayment of tax arose in 2016 arising from the fact that [REDACTED] did not operate the new P2C. An under deduction arose in 2017 as [REDACTED] did not implement the P2Cs that were issued to them. Social welfare benefits were also included and taxed in 2017.
18. The basis of the Appellant's appeal is that his former employers ([REDACTED]) failed to remit tax to the Revenue Commissioners on his behalf. However, this assertion is incorrect. The Respondent confirmed that the underpayments of tax arising in relation to the Appellant's taxes for the relevant tax years of assessment, did not arise as a result of a shortfall in the remittance of taxes by his employers. The Respondent stated that the Appellant received the benefit of remittances which were made on his behalf by his employers and that there was no shortfall in the sums which were credited to the Appellant, based on these remittances. However, there remained an underpayment of tax based on the Appellant's total income for the respective tax years of assessment as evidenced by the following figures and tax calculations;

Re: tax year of assessment 2014

19. [REDACTED] income for 2014 totalled €14,450. Tax paid on this income totalled €0. [REDACTED] income for 2014 totalled €8,651. Tax paid on this income totalled €93. Therefore, income received by the Appellant in 2014 totalled €23,101 and total tax paid in relation to that income amounted to €93. The sum of €23,101 was subject to tax at 20% (totaling €4,620) which was reduced by tax credits of €3,460. This resulted in a tax liability of €1,160.
20. One employer's tax credit certificate (P2C) issued in respect of 2014. The P2C issued to [REDACTED] for the full rate band and tax credits. The [REDACTED] employment was not added to the Respondent's system until 17/03/2015. The Respondent submitted that the underpayment of tax in the Appellant's [REDACTED] employment (despite the amendments made following the JIU investigation) led to the overall underpayment for 2014.



Re: tax year of assessment 2015

21. ■■■ income for 2015 totalled €2,421. Tax paid on this income totalled €0. ■■■ income for 2015 totalled €17,480. Tax paid on this income totalled €270.21. Therefore, income received by the Appellant in 2015 totalled €19,901.76 and total tax paid amounted to €270.21. The sum of €19,901.76 was subject to tax at 20% (totalling €3,980.35) which was reduced by tax credits of €3,420. This resulted in a tax liability of €560.35.
22. One employer's tax credit certificate (P2C) issued in respect of 2015 and this issued to ■■■ for the full rate band and tax credits. The ■■■ employment was not added to the Respondent's system until 10/01/2016.
23. The underpayment of tax in the Appellant's ■■■ employment (despite the amendments made following the JIU investigation) led to the overall underpayment for 2015 as outlined by the figures.

Re: tax year of assessment 2016

24. ■■■ income for 2016 totalled €2,063.59. Tax paid on this income totalled €0. ■■■ income for 2016 totalled €18,729.48. Tax paid on this income totalled €608.40. Therefore, income received by the Appellant in 2016 totalled €20,793.07 and total tax paid amounted to €608.40. The sum of €20,793.07 was subject to tax at 20% (totalling €4,158.61) which was reduced by tax credits of €3,380. This resulted in a tax liability of €778.61.
25. One employer's tax credit certificate (P2C) issued in December 2015, to ■■■ which contained the full rate band and credits. ■■■ was added to the Respondent's system on 05/10/2016 which triggered a P2C for 2016 which contained nil credits and rate band. The final P2C issued on 08/11/2016. Credits and rate bands were split between the employments and each employment operated on a cumulative basis. ■■■ operated a rate band of €8,000 with zero credits while ■■■ operated a rate band of €25,000 and credits of €3,380. An underpayment of tax arose in this instance as ■■■ did not operate the updated P2C issued in November 2016 which led to the overall underpayment for the year as outlined in the figures.

Re: tax year of assessment 2017



26. [REDACTED] income totalled €6,283.75 and tax paid on this income totalled €456.77. [REDACTED] income for 2017 totalled €12,304.47 and tax paid on this income totalled €576.84. [REDACTED] income for 2017 totalled €6,790.42. Tax paid on this income totalled €272.56. Jobseekers benefit for the year totalled €694. Therefore, income received by the Appellant in 2017 totalled €26,072.64 and total tax paid amounted to €1,306.17.
27. The sum of €26,072.64 was subject to tax at 20% (totalling €5,214.53) which was reduced by tax credits of €3,340. The Respondent added a coded underpayment of €541.64 which appears to have been carried forward. This resulted in a tax liability of €2,416.17.
28. [REDACTED] and [REDACTED] operated the correct P2Cs and deducted the correct tax based on the tax credit and rate band allocated. The underpayment arose as [REDACTED] did not implement the P2Cs that were issued to them. Jobseekers benefit of €694 was added to the record after the end of the year and taxed accordingly.

Determination

29. This is an appeal against PAYE/USC end of year statements for 2014 to 2017. The Appellant's position was that the Respondent should have pursued his employers for the outstanding taxes because in view of the Appellant, his employers failed to remit taxes on his behalf to the Revenue Commissioners
30. The question to be addressed in this appeal is whether the Respondent was entitled to proceed to recover from the Appellant, the tax under deducted by his former employers. The relevant statutory provision, regulation 28(3) of the Income Tax (Employments) (Consolidated) Regulations, 2001, provides that the Respondent must be satisfied that the employer took reasonable care to comply with the provisions of the regulation and must be satisfied that the under-deduction was due to an error made in good faith.
31. For the reasons set out above, I am satisfied that the Respondent was entitled to proceed pursuant to regulation 28(3) and to recover from the Appellant, the tax unpaid which arose as a result of the under deductions on the part of the Appellant's employers.



32. Accordingly, I determine that the following P21 end of year statements in respect of 2014-2017 totalling €2,505 shall stand. (The €2,505 should be reduced by any sums which have been credited in reduction of those amounts since the commencement of these proceedings);

- 2017 – End of year statement dated 9 Apr 2018 showing underpayment of €1,296.02
- 2016 – End of year statement dated 1 Oct 2018 showing underpayment of €222.84
- 2015 - End of year statement dated 17 Sept 2019 showing underpayment of €300
- 2014 – End of year statement dated 1 Oct 2018 showing underpayment of €995.63. (The Respondent has since instructed that the balance totalled €686.40 post offset.)



COMMISSIONER LORNA GALLAGHER

2nd day of March 2023

