



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against a Notice of Amended Assessment to Income Tax in respect of the year 2021 raised by the Revenue Commissioners (hereinafter "the Respondent") on 27 September 2022 (hereinafter the "Amended Assessment").
2. The amount of tax at issue is €9,799.40.

Background

3. Mr ██████████ (hereinafter the "Appellant") is retired and is jointly assessed to tax with his wife.
4. The Appellant was entitled to receive pension payments in respect of a former employment from 1 July 2017 onwards. The Appellant did not seek or receive the pension payments relating to his former employment until 2021 when he received a payment of the arrears of work pension payments which had accrued since 2017. The Appellant received total work pension payments in 2021 of €67,540.50 from the pension company which

represented an amount of €53,000 of arrears relating to the years 2017 to 2020 inclusive. The pension payments were taxed at source by the pension company.

5. The Appellant submitted a Form 11 tax return for 2021 to the Respondent on 26 August 2022 which did not include payments in the amount of €25,370 received by the Appellant and his wife from the Department of Social Protection. A Notice of Assessment issued in accordance with this Form 11 tax return on 19 September 2022 showing a refund of €1,197.61
6. The Respondent amended the Appellant's return to include payments received by the Appellant and his wife from the Department of Social Protection of €25,370 and raised the Amended Assessment on 27 September 2022 which indicated a liability of €9,799.40.
7. The Appellant submitted a Notice of Appeal to the Tax Appeals Commission on 26 October 2022.
8. On 21 December 2022 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result, the within appeal has been determined pursuant to section 949U of the TCA1997.

Legislation and Guidelines

9. The legislation relevant to the within appeal is as follows:

Section 112 of the TCA1997 – "*Basis of assessment, persons chargeable and extent of charge*":

- "(1) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.*
- (2) (a) In this section, "emoluments" means anything assessable to income tax under Schedule E.*

(b) Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of subsection (1):

(i) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

(3) Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment.

(4) Where emoluments chargeable under Schedule E arise in the year of assessment 2017, and those emoluments are also chargeable to income tax in accordance with subsection (3) for the year of assessment 2018 or a subsequent year of assessment, the amount of the emoluments chargeable to income tax for the year of assessment 2017 shall, on a claim being made by the person so chargeable, be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment.

(5) Where a person dies and emoluments are due to be paid to that deceased person, the payment of such emoluments shall be deemed to have been made to the deceased person immediately prior to death.

(6) (a) In this subsection, "proprietary director" has the same meaning as it has in section 472.

(b) Subsection (3) shall not apply to—

(i) emoluments paid directly or indirectly by a body corporate (or by any person who is connected (within the meaning of section 10) with the body corporate) to a proprietary director of the body corporate, or

(ii) emoluments in respect of which a notification has issued under section 984(1).”

Submissions

Appellant's Submissions

10. The Appellant submitted the following in support of the within appeal in his Notice of Appeal:

“Dear Tax Appeals Commission,

I request to appeal the Notice of Amended Assessment for year ending 2021 on just one area.

I was [REDACTED] member In [REDACTED] which closed down and I was made unemployed.

I did a Degree and got a job bridge 6 months internship as an [REDACTED] [REDACTED]. I was lucky them to get full time employment in [REDACTED] as [REDACTED].

I worked in [REDACTED] and many other areas in [REDACTED]. I did overtime, but could not claim some of it due to working time act. I worked throughout Covid and never went sick or took sick days.

I am a member of the [REDACTED]. When I reached Occupational age I did not take my pension and worked throughout. [REDACTED] [REDACTED]

I was to get my pension from July 2017, however due to legal advice I did take it, also I did not want to highlight my age in [REDACTED]

In January 2021 having being told I would have to retire in November 2021 due to reaching [REDACTED]. I also had been diagnosed with diabetes 2 and knee joint pain. This was my own fault due to bad diet etc.

I decided to take my pension in January 2021 back dated to July 2017 a sum of 53,000

euros.

This was taxed separately by [REDACTED] at 40 cents in the Euro. In my 2021 assessment this was included in my total earnings and increased my tax rate of 40 cents in the Euro.

2021 was my last year in employment due to having to retire. Would it be possible for me to request that the Occupational Pension Payment from July 2017 to January 2021 to be spread over the years 2017 to 2021 to reduce my tax liability of 40 cents in the Euro or any other method to reduce my amount to pay.

Hoping for your kind consideration and approval.

Yours Sincerely”

11. The Appellant submitted the following in support of the within appeal in his Statement of Case:

“Dear Sir/ Madam,

I thank you for the opportunity to make an appeal and was not aware of the Tax Appeals commission until recently.

*I applied for a Job bridge position in the [REDACTED] and then got a permanent position. I worked in many areas as an [REDACTED]
[REDACTED] I worked in the [REDACTED]
[REDACTED]*

*I am a member of the [REDACTED] pension scheme. Due to many issues it was losing money. These issues were not addressed during the journey from public to private. To save the pension scheme pensions were reduced. [REDACTED]
[REDACTED]*

I was an older person when working in [REDACTED]. I did not want to let people know my age.

So:

- 1. Due to [REDACTED] I did not take my pension as it would [REDACTED].*
- 2. I did not want to let people know my age.*

In [REDACTED], I came in early to get parking and also to get on top of my workload. I worked long hours even more so during Covid evenings and weekends.

I did not get paid for some due to Working Time Act.

I was so totally dedicated to my work from dawn to dusk that I did not think about anything else.

██████ got on to me in January 2021 saying I had not taken my pension from 2017 and could lose it.

Due to knee joint pain and diabetes 2 that I did not know about until later, I decided to take my pension and was taxed on it at 40 per cent at source.

By taking my occupational pension in 2021 and with my wages etc this put me into paying a large amount at 40 per cent.

I request that the taxation of my pension be spread from 2017 and so limit the amount of tax at 40 per cent.

I also request this on compassionate grounds as this is the only time in my life that I will be in this position.

Hoping for your kind consideration and approval.

Yours Sincerely.”

Respondent's Submissions

12. The Respondent submitted that Amended Assessment is correct. The Respondent submitted that the Appellant's Form 11 tax return for 2021 showed pension income of €67,540.50 which included the arrears of pension of €53,000. In addition, the Respondent submitted, the Appellant had not included payments from the Department of Social Protection.
13. The Respondent submitted that on 4 November 2022 it had written to the Appellant in relation to the Appellant's request that the pension payments be apportioned over the years 2017 to 2021 and set out that any payment of income from an employment or pension is charged to tax in the year it is actually paid and not the year it is earned.
14. The Respondent relied on section 112 of the TCA1997.

Material Facts

15. The following material facts are not at issue in the within appeal and the Commissioner finds the following as material facts:

- (i) The Appellant is jointly assessed to tax with his wife;
- (ii) The Appellant was entitled to receive his work pension from 1 July 2017;
- (iii) The Appellant first claimed his work pension in 2021;
- (iv) The Appellant received payments of €67,540.50 in respect of his work pension in 2021;
- (v) The Appellant submitted a Form 11 tax return to the Respondent on 26 August 2022 which indicated a refund of €1,197.61;
- (vi) The Appellant and his wife had received payments totalling €25,370 from the Department of Social Welfare in 2021;
- (vii) The Payments received by the Appellant and his wife were not included in the Form 11 tax return submitted by the Appellant to the Respondent;
- (viii) The Respondent amended the Appellant's tax return to include the payments received from the Department of Social Protection by the Appellant and his wife;
- (ix) The Respondent raised a Notice of Amended Assessment to Income Tax on 27 September 2022 which indicated a liability of €9,799.40.

Analysis

16. As with all appeals before the Commission 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."

17. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.

18. The Appellant is not disputing that income tax is due and payable on the work pension amounts received by him from the pension company. He has, however, requested that the work pension payments by him in 2021 in respect of the years 2017 to 2020 be apportioned over those years in order that a lower tax rate be applied to those payments.

19. Section 112(3) of the TCA1997 provides that, for the year of assessment 2018 and subsequent years of assessment, income tax "*shall be computed on the amount of the emoluments paid to the person in the year of assessment.*"

20. The Appellant received an amount of €53,000 in respect of the years 2017 to 2020 inclusive relating to his work pension in 2021.
21. The use of the word “*shall*” as set out in section 112(3) of the TCA1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which emoluments received by a taxpayer in the year 2018 and subsequent years may be apportioned to a tax year other than the year in which the amount is received.
22. The Commissioner has no authority or discretion to direct that the amount of €53,000 received by the Appellant in 2021 relating to his work pension in respect of the years 2017 to 2020 be apportioned to the tax years 2017 to 2020.
23. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the tax was not payable by the Appellant.

Determination

24. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant tax was not payable.
25. It is understandable the Appellant will be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied. However, the Commissioner has no discretion in these cases due to the application of section 112(3) of the TCA1997, set out above.
26. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 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 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
22 March 2023