



81TACD2023

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████
██████████ (“the Appellant”) against Statements of Liability issued by the Revenue
Commissioners (“the Respondent”) showing underpayments of PAYE/USC in the total
amount of €13,757.40 for the tax years 2016, 2017 and 2018.
2. The appeal proceeded by way of a hearing on 5 April 2023.

Background

3. In October 2020, the Appellant and his wife sought Statements of Liability for tax years
2016, 2017 and 2018. The relevant statements subsequently showed underpayments of
PAYE/USC of €9,628.93 for 2016, €3,615.73 for 2017 and €512.74 for 2018.
4. On 16 November 2020, the Appellant appealed the Statements of Liability to the
Commission. The appeal proceeded by way of a remote hearing on 5 April 2023.

Legislation and Guidelines

5. Section 112(1) of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) states that

“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.”

6. Section 960C of the TCA 1997 states that

“Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.”

7. Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (SI 559/2001) states that

“The inspector may, in any case where he or she does not propose to make an assessment on an employee with respect to whom tax was deducted during a year, send to the employee, as soon as possible after the end of the year, a statement of his or her liability for the year and showing how it is proposed to deal with any overpayment or underpayment of tax.”

Evidence and Submissions

8. Sworn evidence was provided by the Appellant, and oral submissions were made by an officer of the Respondent. Additionally, the parties submitted separate Statements of Facts prior to the hearing. The Commissioner considers that these documents helpfully outline the evidence/submissions received at the hearing, and therefore he considers it appropriate to set out extracts from those Statements of Facts below.

Appellant

9. The Appellant stated that

“1. I am (Appellant) is a PAYE taxpayer. I and my spouse..., also a PAYE taxpayer, are jointly assessed.

2. On the Appellant’s Notice of Appeal dated 15 November 2020 a tax in dispute figure of €14,326 in respect of tax years 2016, 2017 and 2018 was claimed by the Revenue.

The amount to be verified by a third party qualified accountant and confirmed by the appellant side.

3. *From 2012 till 2015 I have been working full-time for the [REDACTED]*
4. *From 12/03/2015 I finished full-time work at [REDACTED] and became a full-time employee at [REDACTED].*
5. *In 2016 and 2017 ... [REDACTED] re-employed me on a part-time basis. My fixed term contracts was rolling on a 3 months basis...*
6. *Throughout 2016 and 2017 [REDACTED] and [REDACTED] issued me with regular payslips that showed deduction of PAYE and USC taxes.*
7. *Throughout 2016 and 2017 [REDACTED] and [REDACTED] transferred deducted taxes to the Revenue...*
8. *Throughout 2016 and 2017 both [REDACTED] and [REDACTED] [REDACTED] was reporting my total income to the Revenue...*
9. *Throughout 2016-2017 while receiving my taxes and income statements from both [REDACTED] and [REDACTED] the Revenue did not contact me nor my employers regarding underpayment or a short-fall in taxes.*
10. *On 20 October 2020 the Revenue demanded an additional tax payment of €14,326.*

Facts about Revenue handling of my tax matters

11. *In 2020 I've raised an appeal against the Revenue tax claim via TAC.*
12. *From 2021 onwards the Revenue unilaterally began reducing my tax credits to collect the additional tax imposed on me:*
 - 2021 by €1,417
 - 2022 by €904
 - 2023 by €3,348

13. *Since 2021 I've been protested against the Revenue unilateral decision to enforce the additional tax on me and explained my family difficult financial circumstances. The Revenue ignored my plea and, using its powers, enforced additional tax on my pay...*

Key facts about roles and responsibilities as per the Irish tax legislation

1. *The Revenue is responsible for setting up, running and monitoring adequate functioning of the PAYE system.*
2. *The Revenue operates and mandates the PAYE system on all registered employers in ROI.*
3. *PAYE payment of employee's taxes "at source" is made through the direct arrangement between employers and the Revenue.*
4. *Once an employee commences the employment the employer must notify the Revenue. The Revenue then sends instruction to an employer on an employee PAYE/USC taxation.*
5. *The employer deducts the taxes at source according to the Revenue instructions as well as reports to the Revenue an employee income.*
6. *PAYE is a specialised accountancy system. The system must be operated by a qualified accountant on both the Revenue and employers side.*
7. *I am (Appellant) and my spouse possess no qualification in tax accountancy or the tax legislation.*
8. *According to the Revenue own description "PAYE ensures that the yearly amounts you have to pay are collected evenly on each pay day over the course of the tax year."*

Facts about key issue:

9. *The PAYE arrangement between the Revenue, ██████████ failed to operate adequately. Even though the ██████████ have correctly registered my employment and provided my income details, the Revenue failed to send a correct tax instructions to ██████████.*
 10. *The Revenue did not detect the tax issue in the PAYE system until 2020 and now decided to impose the additional tax on me to cover for its failure to organise an adequately operating PAYE system."*
10. Additionally, the Appellant spoke about the impact of the Statements of Liability on his family, which he stated he had previously outlined in correspondence to the Commission. The Commissioner understands this to have been set out in a document submitted by him on 27 December 2020, in which he stated *inter alia* that
- "As a result of the above tax events my family ended up with a huge tax liability, accounting for about 40 per cent of my net annual income, that we have had no indication of nor are capable of handling. As shown above my income fell dramatically*

from €77K in 2016 to €53K in 2019. With costs of living increasing across the board and our income fell sharply, my family have been living from pay check to pay check in the past few years with no additional income in sight. In this light the additional tax liability, to be deducted in the next 4 years, will cut my post-tax annual income by additional 10 per cent. Indeed a further reduction imposed by the Revenue from 2021 will either force my family into a credit cards debt, result in over-due apartment rent payments (and possible eviction), unpaid utility bills or combination of the above. In other words the additional deduction will make a large hole in our already over-stretched, single income family finance.

Emotional and psychological affect

I believe I don't even need to mention the amount of stress, anxiety and desperation we are going through. The psychological impact of a sudden appearance of the huge debt to the Revenue is devastating. Victims of the Dublin property crisis, my family of 4 could not afford a reasonable accommodation for years. Four of us are crammed into a tiny, one bedroom rented apartment. Currently my wife have no choice but to share a double bed with two children ... I have been sleeping for years on the floor in the sitting room."

Respondent

11. The Respondent stated that it was sympathetic towards the Appellant but that the Statements of Liability were correct. It submitted that:

"1. [The Appellant] is a PAYE taxpayer. [The Appellant] and his spouse..., also a PAYE taxpayer, are jointly assessed.

2. On the Appellant's Notice of Appeal dated 15 November 2020 a tax in dispute figure of €14,326 in respect of tax years 2016, 2017 and 2018 was confirmed.

3. A 2016 Tax Credit Certificate issued to [the Appellant] on 10 December 2015 confirming his employment with [REDACTED] and that all available tax credit and rate band allocations were assigned to this employment. There was no employment with [REDACTED] on record.

4. A 2017 tax credit certificate issued to [the Appellant] on 12 December 2016 and had an employment with [REDACTED] included, but again no employment with [REDACTED] was recorded.

5. In 2017, [the Appellant] commenced employment with the [REDACTED] and this employment was confirmed with an amended tax credit certificate for 2017 issued on 17 November 2017.
6. A 2018 tax credit certificate issued to [the Appellant] on 8 December 2017 confirming employments with both [REDACTED] and [REDACTED].
7. [The Appellant] and his spouse requested Statements of Liability for tax years 2016-2018 on 20 October 2020.
8. The underpayment on record for tax year 2016 of €10,197.26 was confirmed on the 2016 Statement of Liability which issued to [the Appellant] on 29 October 2020.
9. The underpayment on record for tax year 2017 of €3,615.73 was confirmed on the 2017 Statement of Liability which issued to [the Appellant] on 20 October 2020.
10. The underpayment on record for tax year 2018 of €512.74 was confirmed on the 2018 Statement of Liability which issued to [the Appellant] on 20 October 2020.
11. [The Appellant] record for 2016 was amended to reflect a week 53 payroll not previously accounted for in 2022. Following this update an amended Statement of Liability issued to [the Appellant] on 22 July 2022 to confirm an underpayment due of €9,628.93.
12. The liability for 2016 of €9,628.93 is now being collected through a reduction of [the Appellant's] tax credits as follows: €2,407.23 for tax years 2023-2025 and €2,407.24 for tax year 2026.
13. The liability for 2017 of €3,615.73 has been collected and continues to be collected through a reduction of [the Appellant's] tax credits. €903.93 has been collected for tax year 2021 and €903.93 has been collected for tax year 2022. The remaining liability for 2017 of €1,807.87 is being collected through a reduction of [the Appellant's] tax credits in the amount of €903.93 in 2023 and €903.94 in 2024.
14. The liability due for 2018 of €512.74 was collected through a reduction of the [the Appellant's] tax credits in 2021.
15. A Statement of Liability issued confirming an overpayment of €651.34 for tax year 2021. A refund subsequently issued via cheque on 14 January 2022 to both the [the Appellant] and his spouse.

16. Revenue have previously advised they are willing to extend the collection of the underpayment beyond 4 years. [The Appellant] has advised he is not agreeable to this, but Revenue would advise this offer remains valid.”

12. In oral submissions, the officer of the Respondent contended that the Appellant seemed to be seeking to appeal against the Respondent’s management of his tax affairs, which was not an appealable matter under the TCA 1997. The Commissioner understood the Respondent’s submission to be that the fault for failing to notify it of the Appellant’s part time employment with [REDACTED] lay with that employer. The Respondent’s officer also referred to a previous decision of the Commission, 111TACD2022, which he submitted considered factually similar circumstances as pertain to this appeal and in which Commissioner Feighery found for the Respondent. In response to a question from the Commissioner, the officer of the Respondent stated that the offer to the Appellant, referred to in the above paragraph, remained open to him.

Material Facts

13. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

13.1. The Appellant is a PAYE taxpayer who is jointly assessed for income tax with his spouse.

13.2. In 2015 the Appellant commenced full-time employment with [REDACTED], which continued until 2017, when he commenced employment with the [REDACTED]. In 2016 and 2017, the Appellant was also employed on a part time basis by [REDACTED].

13.3. On 10 December 2015, the Appellant’s Tax Credit Certificate (“TCC”) for 2016 stated that his employer was [REDACTED].

13.4. On 12 December 2016, the Appellant’s TCC for 2017 stated that his employer was [REDACTED]. On 17 November 2017, the Appellant’s amended TCC for 2017 stated that his employers were [REDACTED] and the [REDACTED].

13.5. On 29 October 2020, the Respondent issued a Statement of Liability for 2016 to the Appellant’s spouse, which showed an underpayment of PAYE/USC of €10,197.26. On 22 July 2022, an amended Statement of Liability for 2016 issued which stated that the Appellant had underpaid PAYE/USC in the amount of €9,628.93.

13.6. On 20 October 2020, the Respondent issued a Statement of Liability for 2017 to the Appellant, which showed an underpayment of PAYE/USC of €3,615.73.

13.7. On 20 October 2020, the Respondent issued a Statement of Liability for 2018 to the Appellant, which showed an underpayment of PAYE/USC of €512.74.

Analysis

14. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: “*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.*”

15. The Commissioner notes that there is no significant disagreement between the parties as to the facts at issue in this appeal. The Respondent contended, and the Appellant did not disagree, that the TCCs for 2016 and 2017 did not record the Appellant’s part-time employment with [REDACTED], and that consequently there was an underpayment of income tax for those years. Additionally, there was a smaller underpayment of income tax for 2018.

16. The Appellant’s submissions were primarily focused on the contention that he should not be held liable for a mistake that he believed had been made by the Respondent and which had resulted in him being obliged to repay tax. The Respondent denied that it was responsible for the error and stated that it had not been properly notified of the Appellant’s employment with [REDACTED]. It stated that the Appellant had been provided with TCCs for 2016 and 2017 but that he had not notified it that [REDACTED] was not recorded on the TCCs.

17. The Commissioner has sympathy for the Appellant in this instance. He has considered the evidence regarding the difficult financial situation in which the Appellant finds himself, and he does not doubt that the Appellant has suffered considerable stress and worry as a result of receiving the Statements of Liability showing underpayments of income tax that are to be repaid.

18. However, as set out in the High Court judgment in *Menolly Homes*, quoted above, the onus lies on the Appellant to demonstrate that the Statements of Liability issued by the Respondent are incorrect. The Commissioner is satisfied that the Appellant has not so demonstrated; indeed, as stated above, it seemed to the Commissioner that the Appellant was not disputing that the underpayment of €13,757.40 had arisen (it should be noted that the Notice of Appeal was stated to be for the amount of €14,326; however, the amended

Statement of Liability for 2016, which issued after the Notice of Appeal, reduced the liability for that year from €10,197.26 to €9,628.93).

19. The Appellant contended that the underpayment arose due to an error by the Respondent. This was disputed by the Respondent, but in any event, the Commissioner is satisfied that sections 112(1) and 960C of the TCA 1997, read together, confirm that the Appellant is liable for the tax underpayments, and for the repayment of that liability. Furthermore, while the Appellant was unhappy with the manner in which the Respondent had sought to recoup the underpayment, the Commissioner considers that this is a matter he does not have jurisdiction to consider in this appeal, which is focused on the Respondent's finding that an underpayment had arisen.
20. The Commissioner agrees with the Respondent that the Appellant seemed to be seeking to appeal the Respondent's management of his tax affairs, and that this is not an appealable matter under the TCA 1997. Section 949A of the TCA 1997 provides that an "appealable matter" means "*any matter in respect of which an appeal is authorised by the Acts.*" The Commissioner is satisfied that the TCA 1997 does not authorise the making of an appeal on the basis of the Respondent's management of a taxpayer's tax affairs. Furthermore, the Commissioner accepts the submission of the Respondent that it was incumbent on the Appellant to check the TCCs that issued for 2016 and 2017, and to notify the Respondent that [REDACTED] was not recorded as one of his employers thereon. In this regard, he 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.*"
21. Insofar as the Appellant submitted that the PAYE system generally was not fit for purpose, and/or that the Respondent's management of the PAYE system was generally deficient or unsatisfactory, the Commissioner is satisfied that such arguments are outside his jurisdiction, which is focused on "*the assessment and the charge*", as stated by Murray J. at para. 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 relevant Statements of Liability were incorrect as a matter of law. For the reasons set out above, the Commissioner is satisfied that the Appellant has not demonstrated that the Statements of Liability were incorrect, and therefore it follows that his appeal cannot succeed.

22. In conclusion, the Commissioner reiterates his sympathy for the difficult circumstances in which the Appellant finds himself. In this regard, he notes the comment of the Respondent's officer at the hearing that the offer to extend the timeframe for repayment beyond four years remained open to the Appellant. The Commissioner does not have jurisdiction to make any directions in respect of how the collection of the underpayment is to be carried out; however, he would respectfully suggest to the Appellant to consider the Respondent's offer and to contact the Respondent directly should he wish to pursue it further.

Determination

23. 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 €13,757.40 for the tax years 2016, 2017 and 2018. Therefore, the Statements of Liability for 2016, 2017 and 2018 stand.

24. The appeal is hereby determined in accordance with section 949AL 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 April 2023