



97TACD2023

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of an amended PAYE/USC Statement of Liability for the year 2021, issued to the Appellant by the Revenue Commissioners (“the Respondent”) on 17 February 2022 (“the 2021 Statement”).
2. This appeal is, by the agreement of the parties, determined without a hearing pursuant to section 949U of the Taxes Consolidation Act 1997 (“the TCA 1997”).

Background

3. For the year 2020 the Appellant was paid taxable income of €27,791.19. Of this income, €13,250.00 came from payments made to the Appellant under the Pandemic Unemployment Payment (“the PUP”) scheme. As with all such payments made in that year, no tax was deducted at source. Instead, the tax due was set out in a PAYE/USC Statement of Liability for 2020 (“the 2020 Statement”), issued to the Appellant on 16 January 2021, which assessed her as having an additional liability on top of her tax already paid of €1,336.41.

4. One of the panels contained in the 2020 Statement is entitled “*Treatment of Result*”. Therein the Respondent indicated that the underpayment would be:-

“Collected by reducing your credits in future years €334.10 for 2022; €334.10 for 2023; €334.10 for 2024; €334.11 for 2025. All future refunds will be automatically offset against this underpayment until it is fully collected.”

5. On 19 January 2022 the Respondent issued a PAYE/USC Statement of Liability for 2021 to the Appellant. This assessed the Appellant as having made an overpayment for that year in the amount of €1,433.94. In the panel entitled “*Treatment of Result*”, the Respondent indicated that the overpayment would be “*Offset against PAYE €1,336.41 2020; LPT €97.53 2020*”.

6. On the same the same date, the Appellant contacted the Respondent at its “My Enquiries” address, stating:-

“I cannot afford my overpayment to go against my underpayment in 2020. Can I continue with reducing my tax credits yearly as agreed and be paid my 2021 overpayment. I am a widow.

7. Following further correspondence on this matter, on 17 February 2022 the Respondent issued an amended PAYE/USC Statement for the year 2021 (“the 2021 Statement”). This recalculated the Appellant’s balance as nil on account of the offset of the tax overpaid for 2021 against the underpayment of PAYE, USC and Local Property Tax in 2020. The Appellant duly appealed this Statement by way of Notice of Appeal delivered to the Commission on 19 February 2022.

Legislation

8. Section 960H of the TCA 1997 is entitled “*Offset between taxes*”. Subsection (2) therein provides:-

“Where the Collector-General is satisfied that a person has not complied with the obligations imposed on the person in relation to either or both—

(a) the payment of tax that is due and payable, and

(b) the delivery of returns required to be made

then the Collector-General may, in a case where a repayment is due to the person in respect of a claim or overpayment—

(i) where paragraph (a) applies, or where paragraphs (a) and (b) apply, instead of making the repayment, set the amount of the repayment against any liability, and

(ii) where paragraph (b) only applies, withhold making the repayment until such time as the returns required to be delivered have been delivered.”

9. Section 202 of the Social Welfare Consolidation Act 2005 is entitled “Grant of supplementary welfare allowance in cases of urgency”. Therein it is provided that:-

“(1) Nothing in section 190 , 191 , 193 or 198 shall prevent the payment of supplementary welfare allowance in an urgent case and, in determining or deciding whether an allowance is payable by virtue of this section and the amount or nature of the allowance, the Executive or deciding officer shall not be bound by anything contained in sections 195 to 198 and Part 4 of Schedule 3 or in any regulations made under this Chapter which appears to the Executive or deciding officer inappropriate in the circumstances of the case.

(2) Where under subsection (1) supplementary welfare allowance is paid to a person who is engaged in remunerative full-time work, the Executive or deciding officer may, where the Executive or deciding officer is satisfied that in all the circumstances of the case it would be equitable so to do, determine or decide that the whole or part of the allowance so paid shall be recoverable from the person to whom it is paid.”

Submissions

Appellant

10. In her Notice of Appeal, the Appellant stated that “*It was agreed that the amount due at end of 2020 would be returned to Revenue by decreasing my credits for 4 years*”. The Appellant elaborated on this in her Statement of Case in the following terms:-

“I was due a rebate of tax at the end of 2021. I owed monies for PUP payments in 2020 but had opted to repay by reducing my tax credits over 4 years as per Government Agreement (please see page 5 per Covid-19 PUP attached). Revenue are refusing me my refund despite my requests for repayment over 4 years. I am a widow and having spoken with several TD’s this option was put in place to avoid hardship.”

11. In support of the appeal, the Appellant furnished the Commissioner with a copy of guidance information concerning the operation of the PUP Scheme, published on the Citizen’s Information website. In a section at page 5 headed “*Taxation of PUP in 2020*”,

this document states “Revenue can collect [an] underpayment by reducing your tax credits over a period of 4 years, starting in January 2022”.

12. It is appropriate to note at this point of the Determination that immediately under this passage in the Citizen’s Information guidance is a link to the Respondent’s own guidance document on the taxation of the PUP in 2020. This guidance states that a tax liability arising from PUP payments made in 2020 could be:-

“[...] collected interest free by reducing your tax credits over four years

or

where the liability is partially paid, the balance could be collected interest free over four years.”

13. Immediately under this is a note, which stresses that:-

“All future refunds will be offset against any underpayment of tax due, or owing, under PUP, until it is fully collected.”

14. Returning to the submissions made by the Appellant, she contended that payment by way of the reduction of credits would avoid her suffering unnecessary hardship. By way of analogy, the Appellant referred in her Statement of Case to section 202 of the Social Welfare Consolidation Act 1995, which allows a Deciding Officer to grant supplementary welfare allowance in urgent cases, without the applicant complying with various statutory conditions that would normally apply.

Respondent

15. The Respondent submitted that it was empowered under section 960H(2)(i) of the TCA 1997 to offset tax outstanding against tax owed. While the Respondent expressed sympathy with the Appellant, it did not accept that there had been any “agreement” regarding the manner in which the tax owed in respect of 2020 would be recouped.

Material Facts

16. The facts material to this appeal were as follows:-

- the Appellant was the recipient of PUP scheme payments during the year 2020, which were not taxed at source;
- the Appellant underpaid tax for the year 2020 in the amount of €1,433.94 (comprising €1,336.41 of income tax and €97.52 of local property tax);

- the Appellant overpaid tax for the year 2021 in the amount of €1,433;
- by way of an amended PAYE/USC Statement of Liability for 2021, issued on 17 February 2022, the Respondent offset the sum overpaid in respect of 2021 against the sum underpaid in respect of the preceding year;
- the Appellant appealed the amended PAYE/USC Statement of Liability for 2021 by way of Notice of Appeal delivered to the Commission on 18 February 2022.

Analysis

17. The Appellant, in her Notice of Appeal and Statement of Case, alleges that there was an agreement between her and the State to the effect that the sum underpaid for 2020 would be collected by the reduction of her credits over a number of years. She argues, therefore, that the balance in the 2021 Statement should reflect her entitlement to repayment.
18. In *Lee v Revenue Commissioners [2021] IECA 18*, the Court of Appeal considered in some detail the scope of the jurisdiction of the Appeals Commissioners. There it was held that the function of an Appeals Commissioner in hearing an appeal is to address the question of whether there is a charge to tax to be applied by reference to legislation and, if there is, the correct amount owed (see paragraph 39 therein).
19. What *Lee v Revenue Commissioners* makes clear is that the Commissioner is not empowered to make a determination on questions such as whether the Respondent made a promise to a taxpayer giving rise to a legitimate expectation that it would, in the collection of tax duly owed, act in a particular way. If a taxpayer wishes to pursue a claim that the Respondent is bound to act on a promise giving rise to a legitimate expectation or estoppel, that claim must be pursued before the High Court, which, unlike the Commission, has unlimited jurisdiction. This includes claims that the Respondent issued documentary guidance information, not constituting legislation, which binds it to a specific course of action in relation to a taxpayer.
20. Accordingly, the Commissioner intends to determine the issue in this appeal by reference to the relevant legislation. However, notwithstanding this, the Commissioner does observe that the documentary material which emanated from the Respondent and was proffered by the Appellant in support of her appeal, does not seem to contain any suggestion of an agreement that tax would be collected only by way of a reduction in credits over several years. In this regard, the Statement of Liability for 2020, issued by the Respondent on 16 January 2021, did indicate that the Appellant's credits in future years would be reduced, but also stated, in the following sentence, that any future

overpayments would automatically be offset and would not be refunded. The Respondent's own guidance documentation, to which a hyperlink was provided in the Citizen's Information guidance also proffered, made precisely the same point. This is what happened in the Appellant's case.

21. The Commissioner has considerable sympathy for the Appellant, particularly in light of her personal circumstances. However, the critical point in the determination of this appeal is that there is no dispute that there was a tax liability for 2020 in the amount of €1,433.94. Section 960H of the TCA 1997 expressly confers on the Collector General the power to offset overpayments made by a taxpayer against underpayments of tax. There is no provision whereby a taxpayer may opt to avoid offset by the future reduction of credits and there is no basis on which the Commissioner may find that the balance assessed in the 2021 Statement, which was nil on account of the offset, was incorrect. For this reason the 2021 Statement must stand.

Determination

22. The Commissioner affirms the PAYE/USC Statement of Liability for the year 2021, issued by the Revenue Commissioners on 17 February 2022, which assessed the Appellant's balance as nil.
23. This appeal has been determined in accordance with section 949AK of the TCA 1997. Either party dissatisfied has the right to appeal to the High Court on a point or points of law within a period of 42 days from the date of the communication of this Determination.



Conor O'Higgins
Appeal Commissioner
18 May 2023