



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

152TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a Statement of Liability issued by the Revenue Commissioners (“the Respondent”) which showed an underpayment of income tax in the amount of €3,928.82 for the tax year 2020.
2. On 16 December 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. The Temporary Wage Subsidy Scheme (“TWSS”) operated from 26 March 2020 to 31 August 2020. It enabled employers to support their employees, through the payment of subsidies which were paid by the Respondent to employers in respect of employees.
4. In 2020, the Appellant’s former employer made TWSS payments to the Appellant.
5. On 19 June 2024, the Appellant received a Preliminary End of Year Statement from the Respondent, which showed an underpayment of income tax in the amount of €3,978.832 for the tax year 2020.
6. On 21 June 2024, the Respondent issued a Statement of Liability to the Appellant’s spouse, which showed an underpayment of income tax in the amount of €3,928.82 for the tax year 2020.
7. On 13 August 2024, the Appellant submitted a Notice of Appeal to the Commission, which enclosed supporting documentation. On 26 November 2024, the Appellant submitted a Statement of Case, which enclosed supporting documentation. On 13 December 2024, the Respondent submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.
8. For completeness, the Commissioner notes that although the Notice of Appeal referred to a decision dated 21 June 2024, which is the date of the Statement of Liability referenced above, it also referred to an amount of €3978.82. That amount corresponds to the amount shown in the Preliminary End of Year Statement referenced above. However, the Commissioner is satisfied that the appealable matter in this case is the

Statement of Liability provided by the Appellant to the Commission, which is dated 21 June 2024, and which assessed an underpayment in the amount of €3928.82.

Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:
10. Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 ("EMPI Act 2020" provides (among other things):

"(5) Where this section applies, then, following the notification by the employer of the payment of emoluments to a specified employee in the applicable period in accordance with Regulation 10 of the Regulations, the following provisions shall apply:

(a) the Revenue Commissioners shall pay to the employer in relation to the specified employee a sum (in this section referred to as a "temporary wage subsidy") of an amount determined in accordance with subsection (6),

(b) the payment referred to in paragraph (a) shall be made by way of bank transfer to the bank account of the employer, the details of which have been provided in accordance with subsection (4)(c),

(c) where, under paragraph (a), a payment is required to be made to the employer in respect of each of 2 or more specified employees by the Revenue Commissioners, the payments under paragraph (a) may be aggregated by the Revenue Commissioners for the purposes of compliance with paragraph (b),

(d) on the payment of the emoluments to the specified employee which are the subject of the notification first-mentioned in this subsection by the employer, the employer shall include in that payment an additional amount equivalent to the temporary wage subsidy in relation to the specified employee,

(e) notwithstanding any other provision of the Act, the additional amount paid by the employer to a specified employee in accordance with paragraph (d) shall not be regarded as emoluments of the specified employee for the purposes of Chapter 4 of Part 42 of the Act and the Regulations, but shall be treated as income chargeable to tax on the specified employee under Schedule E within the meaning of section 19 of the Act,

(f) the employer shall include, and separately identify, in the statement of wages and deductions from wages required to be given by the employer to the specified

employee under section 4 of the Payment of Wages Act 1991, details of the additional amount paid by the employer to a specified employee in accordance with paragraph (d) and that additional amount shall be treated as part of the gross pay of the specified employee for the purpose of the Regulations,

(g) where paragraph (d) applies, the employer shall treat the specified employee concerned as falling within Class J9 of Pay Related Social Insurance for the purposes of the employer's obligations under Chapter 4 of Part 42 of the Act and the Regulations to report matters specified in that Chapter or the Regulations,

(h) the operation of paragraph (g) shall not prejudice the specified employee's entitlement to benefits or assistance under the provisions of the Social Welfare Acts, but, where paragraph (d) applies in relation to a specified employee for any week, the specified employee shall not be entitled to any benefit or payment, related to Covid-19, from the Department of Employment Affairs and Social Protection for that week,

(i) notwithstanding any other provision of the Act, in computing the employer's liability to income tax or corporation tax, as the case may be, the employer shall not be entitled to a deduction in respect of any additional amount paid to a specified employee in accordance with paragraph (d), and

(j) the employer shall comply with any other direction of the Revenue Commissioners that, by virtue of this paragraph, they may reasonably give regarding the reporting of the payment by the employer of an additional amount paid to a specified employee in accordance with paragraph (d), being a direction that facilitates the effective administration of this section.”

Submissions

Appellant

11. In her Notice of Appeal and Statement of Case, the Appellant submitted (among other things):

“On the 19th June 2024, my husband received a notification from revenue through 'my account' on ROS website that we had an underpayment of €3978.82 for the year 2020. This was the first notification we received that we had an underpayment for four years previous.

Back in 2020, I was employed [REDACTED]. I was informed by my employer at the time that he would be claiming the TWSS as [REDACTED] had experienced a drop in income due to the pandemic. During this time, I had no reduction in wage or working hours. In fact, I was working longer hours given the nature of the business. My take home pay had not changed at all during this time, therefore I had reason to be concerned or alarmed that there was any issue with my taxes. At no point, was I advised that I would be liable for tax liability during the period my employer was claiming the TWSS.

From March 2020 to June 2024, I did not receive any notification from revenue that I had an underpayment of tax relating to the TWSS for 2020.

Referencing the citizens' information website, they state that: "In January 2021, Revenue will make a Preliminary End of Year Statement available to all employees. The statement will give employees a preliminary calculation of their income tax and USC position for 2020. It will tell you whether your tax position is balanced or if you have underpaid or overpaid your tax for 2020".

I did not receive this statement, in fact during my communication with revenue via the 'My Enquiries' portal, I was advised that a preliminary statement would have been available to me, but I would have to log onto revenue and request it. Again, if my take home pay was the same during this period, I had no reason to request such a statement.

As I no longer work for that employer, I cannot raise this issue with them, but, I would have expected as a PAYE employee, revenue would have notified me at the end of 2020 that there was an issue with my taxes, not four years later.

This issue could have addressed/rectified in a much more timely manner, and while I was still an employee at that company.

This underpayment should be directed towards my employer at the time, as I was not given any notification by my employer or revenue that I would be liable for this tax back in 2020 or now four years later in 2024."

Respondent

12. In its Statement of Case, the Respondent submitted (among other things):

*"The Appellant was employed [REDACTED].
From April 2020 through until August 2020, the Respondent was notified by the*

Appellant's employer that they had been paid Temporary Wage Subsidy Scheme (TWSS) payments of €7,700.00 pursuant to Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (EMA2020). In addition to this the Appellant received a refund of €1,676.31 income tax and €89.94 Universal Social Charge (USC) through payroll of their employer from 2 April – 4 June 2020. In this instance TWSS payments made to the Appellant during 2020 were not taxed in year.

The Respondent published detailed guidance on the tax treatment of TWSS in the document titled Guidance for PAYE employees whose employers are availing of the Temporary Wage Subsidy Scheme which was published on its website in 2020. In total six versions were published, the final version published on 28 July 2020. The guide provided employees in receipt of TWSS in 2020 with key information on the scheme and a link to the guide is included for completeness: <https://www.revenue.ie/en/jobs-and-pensions/documents/twss-guidance-for-payee-employees.pdf>.

In this case, the Respondent wrote to the spouse of the Appellant on 19 June 2024 and requested that they complete an income tax return for 2020 as required by Section 879 TCA 1997, prior to 5 August 2024.

Following on from this correspondence, the spouse of the Appellant completed an income tax return for this period on 21 June 2024. On receipt of a completed income tax return the Respondent generated a Statement of Liability for 2020 which issued to the Appellant on 22 June 2024. The Statement of Liability confirmed an underpayment on record for 2020 of €3,928.82.

The underpayment will be collected by the Respondent through a reduction of the Appellant's tax credits from 2025-2028: • 2025 = €982.20 • 2026 = €982.20 • 2027 = €982.21 • 2028 = €982.21 ...

Section 28(5)(e) of the EMA2020 provides that TWSS payments made by the employer to an employee "shall not be regarded as emoluments of the specified employee for the purposes of Chapter 4 of Part 42 of [the TCA and S.I. No. 345 of 2018] but shall be treated as income chargeable to tax on the specified employee under Schedule E within the meaning of section 19 of [the TCA]".

There is no ambiguity in the provision that TWSS payments made to employees through their employers were not to be taxed in real-time as normally occurs with wages and/or salary payments. Instead, any liability on such payments fell to be

computed by the filing of a return following the end of the year. This was outlined in the Revenue-published guidance...

The facts of the case clearly establish that the Appellant was in receipt of TWSS payments in 2020. The facts also clearly established that the income tax due on such payments has not been collected, and that the Appellant is liable for the underpayment of tax arising on such payments."

Material Facts

13. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

13.1. In 2020, the Appellant's former employer made TWSS payments to the Appellant.

13.2. On 21 June 2024, the Respondent issued a Statement of Liability to the Appellant's spouse, which showed an underpayment of income tax in the amount of €3,928.82 for the tax year 2020.

13.3. The Appellant did not contest the amount of the underpayment itself and no evidence was presented to the Commissioner to show that the amount assessed was incorrect.

Analysis

14. This appeal relates to a Statement of Liability issued by the Respondent which showed an underpayment of income tax in the amount of €3,928.82 for the tax year 2020. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [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".

Section 28 EMPI Act 2020

15. Section 28 of the EMPI Act 2020 governs the operation of the TWSS.

16. Section 28(5)(a) of the EMPI Act 2020 provides that: *"Where this section applies, then, following the notification by the employer of the payment of emoluments to a specified employee in the applicable period in accordance with Regulation 10 of the Regulations, the following provisions shall apply: (a) the Revenue Commissioners shall pay to the*

employer in relation to the specified employee a sum (in this section referred to as a "temporary wage subsidy") of an amount determined in accordance with subsection (6)".

17. Section 28(5)(d) of the EMPI Act 2020 provides that: *"on the payment of the emoluments to the specified employee which are the subject of the notification first-mentioned in this subsection by the employer, the employer shall include in that payment an additional amount equivalent to the temporary wage subsidy in relation to the specified employee".*
18. In this appeal, the Respondent stated that the Appellant's former employer had notified the Respondent that TWSS payments were made to the Appellant in 2020. Furthermore, the Appellant did not dispute that she had been paid TWSS through her employer in 2020. The Appellant stated that in 2020, she was employed [REDACTED] who informed her that he would be claiming TWSS as [REDACTED] had experienced a drop in income due to the pandemic. Given the documentation provided by both parties, the Commissioner has found it to be a material fact that in 2020, the Appellant's former employer made TWSS payments to the Appellant.
19. Section 28(5)(e) of the EMPI Act 2020 provides that: *"notwithstanding any other provision of the Act, the additional amount paid by the employer to a specified employee in accordance with paragraph (d) shall not be regarded as emoluments of the specified employee for the purposes of Chapter 4 of Part 42 of the Act and the Regulations, but shall be treated as income chargeable to tax on the specified employee under Schedule E within the meaning of section 19 of the Act".*
20. The Commissioner notes that Chapter 4 of Part 42 of the TCA 1997 provides for the collection and recovery of tax through the Pay as You Earn ("PAYE") system of taxation and that the regulations referenced in section 28(5)(e) of the EMPI Act 2020 are the Income Tax (Employments) Regulations 2018 S.I. No. 345 of 2018, which provide for the administration and operation of the PAYE system.
21. Having regard to the wording of sections 28(5)(d) and (e) of the EMPI Act 2020, the Commissioner is satisfied that their import is that where the employer made TWSS payments to the employee, those payments were not made through the PAYE system but instead were treated as income chargeable to tax under Schedule E. Accordingly, it fell to the employee to make income tax returns and pay any tax liabilities due.
22. Furthermore, the Commissioner notes from the Respondent's website www.revenue.ie that in 2020, the Respondent issued *"Guidance for PAYE Employees whose Employers have been affected by the COVID-19 Pandemic and are availing of the Temporary Wage Subsidy Scheme"*, which stated (among other things):

“The subsidy payments are liable to Income Tax and USC; however, the subsidy is not taxable in the same way as your pay is normally through the payroll system during the period of the scheme. Instead you will be liable for Income Tax and USC on the subsidy amount paid by your employer through a review of your tax at the end of the year. When an end of year review takes place, it may be the case that an employee’s unused tax credits will cover any further liability that may arise. Where this is not the case, and should an Income Tax/USC liability arise, it is normal Revenue practice to collect any tax owing in manageable amounts by reducing an individual’s tax credits for a future year(s) in order to minimise any hardship”.

23. The Commissioner observes that the Appellant did not contest the amount of the underpayment itself. More fundamentally, no evidence was presented to the Commissioner to show that the assessed underpayment in the amount of €3,928.82 was incorrect. The Commissioner has found these to be material facts.
24. Instead, the Appellant’s ground of appeal is that she was not notified of an underpayment for the tax year 2020 until 2024 and that the underpayment should be directed towards her former employer, as the Appellant was not notified by her former employer or by the Respondent that she would be liable for the tax.
25. As noted earlier, under the legislation, payment of TWSS was not taxed at source. It was treated as income chargeable to tax, in respect of which the taxpayer was required to make tax returns and pay any tax due.
26. It follows from the above that the Commissioner is satisfied that in circumstances where an underpayment of income tax arose in the amount of €3,928.82 for the tax year 2020, the Respondent was entitled to assess the Appellant with that underpayment.
27. The Commissioner acknowledges the Appellant’s submission that she was not notified of an underpayment until 2024 and that it should have been addressed in a timelier way. The Commissioner understands the Appellant’s frustration in this regard. Nonetheless, the Commissioner has no jurisdiction to consider allegations of unfairness on the part of the Respondent. The Commissioner’s jurisdiction *“is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA”*, as confirmed by the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18.
28. The Commissioner appreciates that this decision will be disappointing for the Appellant and acknowledges the circumstances outlined on appeal. The Appellant was entitled to check whether her legal rights were correctly applied.

Determination

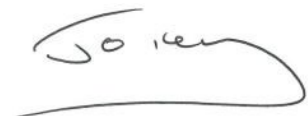
29. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the underpayment of income tax assessed in the amount of €3,928.82 for the tax year 2020 was not payable. Accordingly, the Commissioner determines under section 949AK of the TCA 1997 that the Statement of Liability stands.
30. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

31. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

32. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny
Appeal Commissioner
1 April 2025