



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

186TACD2025

Between



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a Statement of Liability for the year 2020 issued by the Revenue Commissioners (hereinafter the “Respondent”) on 20 August 2024 which showed an underpayment of tax of €1,884.59.

Background

2. [REDACTED] (hereinafter the “Appellant”) is a PAYE worker and taxpayer who, for the purposes of this appeal, was employed by his employer [REDACTED] from October 2018 until July 2020.
3. In 2020, for the pay periods April, May and June, the Appellant received payments of €4,550.01 from the Government through his employer pursuant to the Temporary Wage Subsidy Scheme (hereinafter “TWSS”) which was established under Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (hereinafter the “EMA 2020”).
4. In August 2024, the Appellant submitted an income tax return for the year 2020 to the Respondent, following which a Statement of Liability for 2020 issued to the Appellant on 20 August 2024 which confirmed an underpayment of tax for 2020 in the amount of €1,884.59.
5. The oral hearing of this appeal took place remotely on 6 May 2025.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:

Section 28(1) of the EMA 2020:

“specified employee”, in relation to an employer, means an individual who was on the payroll of the employer as at 29 February 2020, and the following is the case, the employer—

(i) has submitted to the Revenue Commissioners a notification or notifications of the payment of emoluments to the employee in February 2020 in accordance with Regulation 10 of the Regulations, and

(ii) has submitted the return required under section 985G of the Act for the month of February 2020 on or before the return date (within the meaning of section 983 of the Act) for that month;

...

Section 28(5) of the EMA 2020:

“(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:

...

(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,

...”

Section 112 of the Taxes Consolidation Act 1997 (hereinafter the “TCA 1997”):

“(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

7. The Appellant submitted the following ground of appeal in his Notice of Appeal:

"The company I worked for in 2020 [REDACTED] availed of the Wage Subsidy Scheme. I left the company in August 2020. Throughout my employment for the duration of the Wage Subsidy Scheme, I was employed full-time and had no reduction in my hours. The pay slips had a breakdown of my salary with company/ WSS at 50/50%. I was not paid extra during that period and the company was fully responsible for managing my taxes. Also, I was not aware at the time that I owed any taxes when left the company as my salary was net assuming the company paid all the taxes on WSS and others.

The company ceased trading approx. 1 year after I left and in 2024 I completed my Tax Return for 2020 and was notified of my underpayment for 2020 through the Statement of Liability for 2020. I'm unable to contact the company as it's not trading any longer.

Recovering the underpayment from me will reduce my net pay and will leave me out of pocket for something that is not of my doing.

Pay Slips for the WSS period are attached further."

8. The Appellant submitted the following in his Statement of Case:

"I was employed by [REDACTED] from 2018 till July 2020. The company availed of TWSS during the last 4 months of my employment April – July 2020. During this period 50% of my salary was covered by the TWSS payments. My hours or salary over this period have not changed. [REDACTED] notified me of the TWSS payments during that period. The company didn't pay tax on the TWSS payment and this was due to be paid once the TWSS scheme would lapse by the company.

[REDACTED] went into administration shortly after in 2020-2021.

I fully understand the tax underpayment quoted by Revenue, however, the taxes were managed by [REDACTED]. Unfortunately, it is not possible for me to recover the unpaid taxes as the company ceased trading.

If I'm to pay the tax underpayment this will reduce my net salary.

...

While I understand the TWSS provisions and the responsibility of the employee under it, this was less clear at the time when I left the [REDACTED] in July 2020. Please note the Guidance for PAYE employees whose employers are availing of the TWSS was issued at the end of July 2020.

I'm in a position now where my tax credits will be reduced due to the TWSS tax underpayment which is of not my doing and the company that is responsible for not paying taxes doesn't exist any longer. As far as I was aware at the time when I left the company the taxes will be paid by [REDACTED]. I tried to clarify the tax underpayment once I was aware of it when completing the 2020 tax return form in 2024 but couldn't get a response from the [REDACTED] as they are not trading any longer."

9. At the oral hearing, the Appellant submitted that he had been informed by his former employer that he would be paid under the TWSS scheme and that his employer had also directed him to the publication by the Respondent entitled "*Guidance for PAYE employees whose employers are availing of the Temporary Wage Subsidy Scheme*" (hereinafter the "Guide") on the Respondent's website. His former employer, he stated, had informed him that his net pay would not be affected. As far as he was aware, he stated, nothing would change as a result of his employer availing of the TWSS scheme.
10. He stated that his work hours had not been affected by the COVID-19 pandemic and that he continued to work his normal hours during that period.
11. He stated that, at the time of receiving the TWSS payments, his payslips had been changed to reflect the fact that 50% of his salary was coming from the TWSS scheme during the months of April, May and June of 2020.
12. He stated that when he left his employment, he had not been made aware by his former employer that he owed tax or that he needed to take any further steps in relation to his tax situation.
13. He stated that it was only when he received communication from the Respondent in 2024 that he became aware that there was an issue. He stated that he tried to get in contact with his former employer at that stage but that, in circumstances where his former employer had ceased trading, he was not in a position to receive any further information from them.
14. He stated that he feels that he has been placed in an unfair position of owing tax in circumstances where his employer should have been paying his taxes. He stated that he would understand the need for him to file returns with the Respondent if he was self-employed, but in circumstances where he has always been a fully compliant PAYE taxpayer, he feels should not be in this position.

Respondent's Submissions

15. The Respondent submitted that section 28 of the EMA 2020 provides the statutory basis for the TWSS.
16. The Respondent submitted that the TWSS payments were not to be regarded as emoluments for the purposes of the PAYE system and, instead, were to be treated as being income chargeable to tax under Schedule E pursuant to sections 19 and 112 of the TCA 1997.
17. The Respondent submitted that pursuant to section 28(5)(d) and (e) of the EMA 2020, the TWSS payments which were made to the Appellant through his former employer were not regarded as emoluments for the purposes of the TCA 1997 and were therefore not taxed in real-time by his employer.
18. The Respondent submitted that it had published detailed guidance on the tax treatment of TWSS in the Guide which was published on its website in 2020. In total six versions were published, with the final version having been published on 28 July 2020.
19. It was submitted that the Guide provided employees in receipt of TWSS in 2020 with key information on the scheme.
20. The Respondent further submitted that question 6 of the Guide contained an explanation to employee recipients of TWSS payments as follows:

“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. Additionally, if an individual has any additional tax credits to claim, for example health expenses, this will also reduce any tax that may be owing.”
21. The Respondent submitted that the liability to income tax in the contested Statement of Liability for 2020 is correct.

22. The Respondent submitted that it has sought to mitigate any potential hardship to the Appellant by spreading out the repayment of tax over a period of 4 years by way of a reduction in the Appellant's tax credits.

Material Facts

23. The material facts are not in dispute in this appeal and the Commissioner accepts the following as material facts:

- 23.1. The Appellant is a PAYE worker and taxpayer who was employed by his former employer from October 2018 until July 2020.
- 23.2. In 2020, for the pay periods April, May and June, the Appellant received TWSS payments of €4,550.01 from the Government through his former employer.
- 23.3. In August 2024, the Appellant submitted an income tax return for the year 2020 to the Respondent, following which a Statement of Liability for 2020 issued to the Appellant on 20 August 2024 which confirmed an underpayment of tax for 2020 in the amount of €1,884.59.

Analysis

24. 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, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."

25. Section 28 of the EMA 2020, entitled "*Covid-19: temporary wage subsidy provisions*", provides the legislative basis for TWSS payments which were introduced in March 2020 as a result of the COVID-19 pandemic and which ended in August 2020.
26. Section 28(5)(a) of the EMA 2020 provided that, following notification by an employer of the payment of emoluments to a specified employee in the applicable period, in this case between April and June 2020, "*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")...*".
27. It is not in dispute between the Parties that the Appellant was a specified employee as defined in section 28(1) of the EMA 2020.

28. In addition, section 28(5)(d) of the EMA 2020 provided 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,”*.
29. It is not in dispute between the Parties that, in 2020, the Appellant received payments from his former employer which included TWSS payments. It is also not in dispute between the Parties that the Appellant received €4,550.01 in TWSS payments from the Government through his former employer in 2020.
30. Section 28(5)(e) of the EMA 2020 provided 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,”*.
31. The provisions of section 28(5)(e) of the EMA 2020 meant that TWSS payments made by the Government to employees through their employers were not to be taxed in real-time through the PAYE taxation system as normally occurs with wages and/or salary payments made by employers to employees. Instead, the onus of discharging any liabilities which arose on foot of the receipt of TWSS payments was placed on employees.
32. As a result, employees who had received TWSS payments were obliged to file returns with the Respondent for the tax year 2020 and to discharge any resulting liabilities to the Respondent on filing their returns. As set out by the Respondent, the Guide which notified employees of this provision and which was published by the Respondent in this regard pursuant to section 28(19) of the EMA 2020. The Appellant accepted at the oral hearing that his employer had directed him to the Guide prior to the TWSS payments being made to him.
33. Having considered the legislation and the submissions of the parties both written and oral, the Commissioner finds that the TWSS payments totalling €4,550.01 which the Appellant received in April, May and June of 2020 from his former employer were correctly treated by his former employer as not being subject to PAYE. This is provided for in section 28(5)(e) of the EMA 2020.
34. Having considered the legislation and the submissions of the parties, both written and oral, the Commissioner finds that:

- 34.1. the Appellant was subject to tax on foot of the TWSS payments which he received through his employer in 2020;
- 34.2. the TWSS payments totalling €4,550.01 which the Appellant received in April, May and June of 2020 from his former employer were correctly treated by his former employer as not being subject to PAYE and instead were emoluments under schedule E of the TCA 1997;
- 34.3. as a result, the Appellant was required to file a return to the Respondent in relation to the Schedule E emolument which he received in 2020, which said obligation he complied with in August 2024;
- 34.4. the Statement of Liability for 2020 issued by the Respondent on 20 August 2024 which established a liability to tax for 2020 of €1,884.59 was correct.

Determination

- 35. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the relevant tax was not payable. Therefore, the Commissioner determines that the Statement of Liability for 2020 issued by the Respondent on 20 August 2024 shall stand.
- 36. The Appellant finds himself in an unfortunate situation and it is understandable that he will be disappointed with the outcome of this appeal. The Commissioner notes that the Respondent has sought to mitigate any potential hardship to the Appellant by spreading out the repayment of tax over a period of 4 years by way of a reduction in the Appellant's tax credits.
- 37. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

- 38. 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

39. 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.



Clare O'Driscoll
Appeal Commissioner
9 May 2025