



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

190TACD2025

Between

[REDACTED]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## **Contents**

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	3
Submissions .....	5
Appellant .....	5
Respondent.....	6
Material Facts .....	7
Analysis .....	7
Section 28 EMPI Act 2020.....	8
Determination .....	10
Notification .....	10
Appeal .....	11

## 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 €3,265.18 for the tax year 2020.
2. On 10 March 2025, 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 26 November 2024, the Respondent issued a Statement of Liability to the Appellant, which showed an underpayment of income tax in the amount of €3,265.18 for the tax year 2020.
6. On 19 December 2024, the Appellant submitted a Notice of Appeal to the Commission, with supporting documentation. The supporting documentation consisted of a Statement of Liability dated 26 November 2024 and certain payslips from 2020. On 19 February 2024, the Respondent submitted a Statement of Case. On 3 March 2024, the Appellant submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## Legislation and Guidelines

7. The legislation relevant to this appeal is as follows:
8. 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*

9. In his Notice of Appeal, the Appellant submitted:

*"I disagree with this assessment because overall my take home pay was less after the wage subsidy started. My employer was the only one who was benefitting from it. If my employer had taxed it at source my take home pay would have been the same. My employer during that time unfortunately passed away and that firm no longer exists."*

10. In his Statement of Case, the Appellant submitted (among other things):

*"Tax year 2020 the Temporary Wage Subsidy of €8,023.15 was paid to my employer of which income tax was not paid which I acknowledge, Revenue want me to pay €3,017.16 income tax on the subsidy amount. My income for 2020 was the same as though income tax was paid, my employer kept this tax and gave me wages as normal, I did not benefit in any way, sadly my employer passed away on [REDACTED] and that company no longer exists, to my understanding but not 100% sure Revenue requested this payment from my previous employer, which was not paid because he was very ill at that time. (I know Revenue didn't get it, I didn't get it, and my previous employer didn't pay it) so I'm requesting the Appeals Commission to uphold my appeal on the grounds that it would be unfair and morally wrong for me to have to pay this*

*debt...I have already forwarded to the Commission all my wage slips for 2020 which prove that I did not get or benefit from the non payment of this income tax"*

*Respondent*

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

*"The Appellant was employed [REDACTED] in 2020. From April 2020 through until September 2020, the Respondent was notified by the Appellant's employer that they had been paid Temporary Wage Subsidy Scheme (TWSS) payments of €8,023.15 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 €398.04 income tax and €53.49 Universal Social Charge (USC) through payroll in April and May 2020. In this instance the 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 Appellant on 17 September 2024 and requested that they complete an income tax return for 2020 as required by Section 879 TCA 1997, prior to 25 November 2024.*

*The Appellant submitted their income tax return for 2020 on 26 November 2024 and the Respondent issued them with a Statement of Liability for this period on 27 November 2024.*

*The Statement of Liability for 2020 confirmed an underpayment for this tax year of €3,265.16.*

*This underpayment will be collected by the Respondent through a reduction of the Appellant's tax credits from 2025-2028: • 2025 = €816.29 • 2026 = €816.29 • 2027 = €816.29 • 2028 = €816.29 ...*

*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**

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
  - 12.1. In 2020, the Appellant’s employer made TWSS payments to the Appellant.
  - 12.2. On 26 November 2024, the Respondent issued a Statement of Liability to the Appellant, which showed an underpayment of income tax in the amount of €3,265.18 for the tax year 2020.
  - 12.3. 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**

13. This appeal relates to a Statement of Liability issued by the Respondent which showed an underpayment of income tax in the amount of €3,265.18 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”.*

14. The Court of Appeal recently confirmed this position in *JSS, JSJ, TS, DS and PS v A Tax Appeal Commissioner* [2025] IECA 96, where McDonald J. stated at paragraph 34 that:

*“the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”*

*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 employer had notified the Respondent that TWSS payments of €8,023.15 were made to the Appellant in 2020. The Appellant did not dispute this, stating that: *“Temporary Wage Subsidy of €8,023.15 was paid to my employer of which income tax was not paid which I acknowledge...My income for 2020 was the same as though income tax was paid, my employer kept this tax and gave me wages as normal”.* Given the documentation provided by the 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](http://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 notes the Appellant's submission that the payslips he has provided show that the Appellant did not benefit from the non-payment of income tax. However, the question at issue is not whether the Appellant benefitted from the non-payment of income tax, but whether the Appellant has shown that the assessed underpayment of income tax was wrong.
24. 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 €3,265.18 was incorrect. The Commissioner has found these to be material facts.
25. Instead, the Appellant's ground of appeal was that: "*to my understanding but not 100% sure, Revenue requested this payment from my previous employer, which was not paid because he was very ill at that time... it would be unfair and morally wrong for me to have to pay this debt*". However, 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 €3,265.18 for the tax year 2020, the Respondent was entitled to assess the Appellant with that underpayment.
27. The Commissioner acknowledges the Appellant's appeal submission and appreciates that the Appellant considers it unfair and morally wrong to be required to repay the underpayment assessed. 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 his legal rights were correctly applied.

### **Determination**

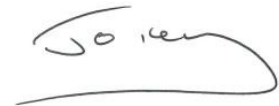
29. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the underpayment of income tax assessed in the amount of €3,265.18 for the tax year 2020 was not payable. Accordingly, the Commissioner determines under section 949AK of the TCA 1997 that 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.

A handwritten signature in dark ink, appearing to read 'Jo Kenny', with a long horizontal flourish extending to the right.

Jo Kenny  
Appeal Commissioner  
30 May 2025