



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

211TACD2025



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) in relation to Notices of Amended Assessment (“the assessments”) to Income Tax for the years 2019, 2020, 2021, 2022 and 2023 (“the relevant years”). The total amount of tax at issue is the amount of €10,198.
2. The liabilities arose in circumstances where the Respondent amended the Appellant’s income tax returns (Form 11) for the relevant years in accordance with Chapter 5 Part 41A TCA 1997 to take into account the taxable income, being pension payments, from the Department of Social Protection (DSP), omitted from the original returns, as follows:

Year	DSP Income Amount (Self)	DSP Income Amount (Spouse)	Additional Liability Amount
2019	€11,153	N/A	€1,575.57
2020	€11,416	€6,328	€1,083.83
2021	€11,204	€11,623	€2,599.96
2022	€11,647	€12,085	€2,071.18
2023	€12,172	€12,623	€2,870.94

3. On 10 December 2024, the Appellant duly appealed the assessments to the Commission by submitting a Notice of Appeal. In accordance with section 949Q TCA 1997, on 4 February 2025, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal and on 11 February 2025, the Respondent submitted its Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.
4. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

Background

5. The Appellant submitted that he is appealing the assessments on the grounds that at no point did the Form 11 ever prompt the Appellant that he must include his Irish State pension and his spouse's salary and Irish State Pension, in the self-assessment profit or income box for the relevant years. The Appellant argued that the Form 11 auto populated many other requirements but failed to auto populate or guide the Appellant, as to this important requirement.
6. The Appellant submitted that the Form 11 recognised that he and his spouse did not pay PRSI, so the Form 11 must have assumed they were both over the age of 65 years. Thus, a pension entitlement would be a relevant requirement for the Form 11, and the Form 11 should therefore trigger the inclusion of that Irish State pension information akin to other areas that it auto populates. The Appellant posited that the Form 11 is not user friendly and should be designed in such a way that it would recognise that his Irish State pension and his spouse's State pension, must be included in the net profit or income figure box.
7. The Appellant submitted that at the age of 74 years of age, he is devastated that he is now being asked to discharge the amount of €10,198 in back taxes, in circumstances where he was of the view that he had always filed his returns correctly and to the best of his knowledge.
8. The Respondent submitted that customers are legally obliged to pay their full tax liability. However, the Respondent stated that it recognised that in some cases this could cause undue hardship and may be impossible for some customers. Therefore, the Respondent will facilitate the customer in making payment of the liability, such as granting the extra-statutory concession of paying the liability over a period of time. The Respondent stated that the Appellant had been advised to apply for a phased payment arrangement, in order to settle his liabilities through regular payment instalments.

Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:-
10. Section 959I TCA 1997, Obligation to make a return, provides *inter alia* that:-
 - (1) *Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form.*
 - (2) *The prescribed form referred to in subsection (1) may include such matters in relation to gift tax and inheritance tax as may be required by that form.*

11. Section 959Y TCA 1997, Chargeable persons and other persons: assessment made or amended by Revenue officer, provides *inter alia* that:

(1) Subject to the provisions of this Chapter, a Revenue officer may at any time—

- (a) make a Revenue assessment on a person for a chargeable period in such amount as, according to the officer's best judgment, ought to be charged on the person,*
- (b) amend a Revenue assessment on, or a self assessment in relation to, a person for a chargeable period in such manner as he or she considers necessary, notwithstanding that—*
 - (i) tax may have been paid or repaid in respect of the assessment, or*
 - (ii) the assessment may have been amended on a previous occasion or on previous occasions.*

Evidence and Submissions

Appellant's submissions

12. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

"I'm appealing Revenues Amended Self Assessments of my Income Tax for the years 2023, 2022, 2021, 2020 and 2019. My reason for appealing the above years, is Revenue agreed with all my first assessments over the last few years, which didn't include my Irish Contributory Pension, or my Spouse's salary and Pension amount. I always included my Foreign Pensions from [REDACTED], for the above years, as I knew Revenue couldn't possible know these amounts. I knew these were subject to tax being outside the country. My understanding for my Irish Contributory Pension and my Spouse's salary, and pension, was that they didn't form part of my earnings and also the Irish Pensions were completely tax free, so they didn't need to be included. At no point when filling in the Form 11 over the above years, did this form ever prompt me, at any time, that you must include my Irish State Pension and my spouse's salary and Irish State Pension, in my self assessments profit, or income box, for the year in question, at the start of Form 11. However the Form 11 autopopulates all other information, like my spouse's salary, knows my Irish pension amount and my spouse's Pension amount. It also knows that we both don't pay PRSI, as it states we're

exempt by placing automatically "nil" in the box provided, hence we must be 66 years of age or more. This should mean that we both receive Pensions, which should trigger off automatically, that it must be included in my self assessment net profit overall figure earned, at the start of Form 11. It seems to me that the computerised Form 11 is not user friendly, it should be engineered in such a way, as to recognise that my State Pension and my spouse's State Pensions and salary, must be included in the net profit or income figure box. There are many other areas, where other fields are highlighted for lesser things, with red warning lettering, stating, this field must be filled in, and you cannot proceed to the next stage of the form, without answering these questions, so why not for such an important field, as both Contributory pensions and salaries to be included in the net profit or income for a couple. I'm devastated that I'm now being asked to pay €10,198 in back taxes, at 74 years of age, thinking that I had always filled in my returns correctly and to the best of my ability. I attached in my Notice of Appeal form all my returns from Revenue my Statement of Net Liabilities, for the year 2023, showing a refund of €2088, in acceptance of my self assessment, dated 12th November 2024. This included my €759 preliminary tax, for 2023. Within a few days of this letter, on the 22nd November 2024, I received an Amended Self Assessment from Revenue for €2870 of income tax, going from a refund, to now owing tax. Revenue have now gone back all the years to 2019, to apply the same criteria as 2023, to include my State Pension, my Spouse's State pension, and her salaries over the appropriate years she was working in all my self assessments, generating back taxes, to be paid immediately. I'm hoping that a resolution can be found to this tax demand, with a proposed settlement figure, and to be paid in instalments. I'd appreciated it very much, if you can assist me, by liaising with the various tax departments, to achieve a favourable outcome, agreeable to all sides." (sic)

Respondent's submissions

13. The Commissioner sets out hereunder a summary of the submissions as set out in the Respondent's Statement of Case:-

"Appellant's Income tax returns (Form 11s) for the years, 2019, 2020, 2021, 2022 and 2023 were amended by Revenue to include taxable income from Department of Social Protection (DSP), omitted from original return.

- 2019 Income tax return - submitted on 09/11/2020 – amended by Revenue on 02/12/2024: DSP income included in amount of €11,153 under 'Self' – resulting in additional liability of €1,575.57*

- 2020 Income tax return – submitted on 09/11/2021- amended by Revenue on 02/12/2024: DSP income included in amount of €11,416 under ‘Self’, and €6,328 under ‘Spouse’, resulting in additional liability of €1,083.83
- 2021 Income tax return – submitted on 08/11/2021- amended by Revenue on 02/12/2024: DSP income included in amount of €11,204 under ‘Self’, and €11,623 under ‘Spouse’, resulting in additional liability of €2,599.96
- 2022 Income tax return – submitted on 15/11/2023 – amended by Revenue on 02/12/2024: DSP income included in amount of €11,647 under ‘Self’, and €12,085 under ‘Spouse’, resulting in additional liability of €2,071.18
- 2023 Income tax return – submitted on 12/11/2024 – amended by Revenue on 21/11/2024: DSP income included in amount of €12,172 under ‘Self’ and €12,623 under ‘Spouse’, resulting in additional liability of €2,870.94

Appellant is appealing Revenue’s decision to amend Income tax returns for the years 2019, 2020, 2021, 2022 and 2023 to include taxable income from Department of Social Protection (DSP) that the Appellant and his spouse were in receipt of, as per information received from DSP.

This Revenue’s intervention was carried out in accordance with Chapter 5 Part 41A TCA 1997:

'Subject to Chapter 5 of Part 41A, Revenue may raise a Revenue Assessment at any time. Equally, an amendment may be made to a Revenue assessment or a self-assessment at any time, notwithstanding that the assessment may already have been amended. When making or amending an assessment, Revenue may accept in whole or in part anything in the return, and they may assess any income, profit or gain / allow any deduction, relief or credit. That Revenue has already amended an assessment does not preclude a further amendment. . Where income, profits or gains and the associated tax are not properly reflected in the assessment, Revenue may amend that assessment.'(Part 41A TCA 1997)

Customers are legally obliged to pay their full tax liability. However, Revenue recognises that, in some cases, this could cause undue hardship and may be impossible for some customers. To facilitate the customer in making payment of the liability, Revenue may grant the extra-statutory concession of paying the liability over a period of time.

Therefore, Appellant has been advised to apply for Phased Payment arrangement, to settle his liabilities through regular payment instalments.

Correspondence, in this regard, was sent to the Appellant on 21 January 2025, through 'My Enquiries', Revenue's secure online correspondence service, to the same email as provided by Appellant in the Notice of Appeal."

Material Facts

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

- 14.1. The Appellant was in receipt of a pension from the DSP for the relevant years.
- 14.2. The Respondent amended the Appellant's Form 11 to reflect the inclusion of the Appellant's Irish State pension for the relevant years, which resulted in the assessments being issued to the Appellant, the subject matter of this appeal.
- 14.3. The Appellant submitted his Form 11 income tax returns for the relevant years. However, he was unaware that he was to include both his and his spouse's DSP pension.

Analysis

- 15. The Appellant's appeal relates to various assessments raised by the Respondent in accordance with Chapter 5 of Part 41A TCA 1997, on the basis of pension payments from the DSP having not been included in the Appellant's Form 11 for the relevant years.
- 16. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law, for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated 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".

- 17. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

Income Tax Returns Form 11

18. Part 41A TCA 1997 is entitled "Assessing rules including Self-Assessment". A chargeable person is required to complete a Form 11 tax return and self-assessment. A chargeable person for self-assessment purposes is a person who is chargeable to tax on that person's own account or on another person's account in respect of a chargeable period. Section 959A defines a "chargeable person" as respects a chargeable period, *"a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates"*.
19. The Commissioner understands that when making a self-assessment, the taxpayer can choose to accept the Respondent's calculation or disregard it and enter his/her own figures. When the tax return and self-assessment is submitted, the Respondent will not issue a notice of assessment, instead, a notification acknowledging the self-assessment will issue, which will include a copy of the self-assessment. It is the case that income from an Irish State pension is taxable as emoluments under the Pay As You Earn ("PAYE") system and is subject to the same rates and bands as income tax.
20. There was no dispute in this appeal that the Appellant was a chargeable person and that he had submitted a self-assessment income tax return for the relevant years by submitting his Form 11 to the Respondent. What is at issue in this appeal was that DSP pension payments that both the Appellant and his spouse had received for the relevant years were not included in the Form 11, with the consequence that the Respondent issued the assessments for outstanding income tax liabilities in the sum of €10,198.
21. The Commissioner notes the Appellant's submission that the Form 11 is not user friendly and that it auto populates certain parts of the form but not others, some of which, the Appellant stated, are of critical importance such as pension payments. The Commissioner notes that the Appellant stated that he had included payments from foreign pensions from the UK and Australia, as he was of the view that the Respondent could not be aware of these payments, but at no time did he consider that he must include his DSP pension payments or that the Respondent would not know about these payments. The Appellant submitted that the Form 11 recognised that he and his spouse did not pay PRSI as they were over the age of 66, so on the basis of that fact, there should have been some recognition that the Appellant and his spouse would have been in receipt of a pension

from the DSP given their age. The Commissioner notes that the Appellant is now devastated that he is facing a liability of €10,198, at the age of 74 years.

22. The Commissioner is satisfied that the TCA 1997 in particular Part 41A, confers no authority or discretion on the Commissioner to direct that the amount of tax assessed as being outstanding for the relevant years, not be payable based on the facts and/or arguments made in this appeal. The Commissioner has considerable sympathy for the Appellant and the circumstances outlined by him. Moreover, the Commissioner notes the Appellant's frustration, in relation to the manner in which the Form 11 is populated. Nonetheless, the Commissioner's jurisdiction is limited to interpreting and applying the law as enacted by the Oireachtas. The Commissioner has no supervisory role over the Respondent, nor does she have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent. The Commission's jurisdiction "*is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA*", as per the decision of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18.
23. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Commissioner is satisfied that the Appellant has not discharged the burden of proof to satisfy the Commissioner that the Respondent was incorrect in its decision to issue the assessments for the relevant years.
24. The Commissioner notes that the Respondent has indicated that it would be amenable to engaging with the Appellant with a view to discharging the outstanding liabilities through a phased payment arrangement, and the Commissioner encourages the Appellant to engage with the Respondent in that regard.

Determination

25. As such and for the reasons set out above, the Commissioner determines that that the assessments raised by the Respondent for the relevant years, as set out in paragraph 1 of this Determination, shall stand.
26. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
27. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

28. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

29. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
14 July 2025