69TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a refusal by the Respondent to treat arrears benefits paid by [redacted] to the Appellant on 1 February 2018, as taxable in 2015, 2016 and 2017.

2. Following a finding by the Financial Services and Pensions Ombudsman, [redacted] paid a claim from December 2012 to June 2014 and from July 2014 to 28 November 2017. The payment was made on 1 February 2018. The payment was taxed under the PAYE system.

3. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act ('TCA') 1997 by agreement with the parties.

Background

4. The Respondent by way of a "PAYE/USC End of Year Statement (P21) for the tax year 2018" (treated as if it were an assessment to tax raised on the Appellant), dated 28 March 2019, included as income an amount of €97,314.00, from [redacted] Assurance paid in respect of the above claim.

5. The Appellant appealed the notice of assessment to the Tax Appeals Commission on 10 July 2019.

6. The Tax Appeals Commission (TAC) accepted a late appeal in this case on 19 November 2019.

7. The material facts are not in dispute in this appeal.

Legislation

8. Section 112 Taxes Consolidation Act (hereafter TCA) 1997, as amended by Finance Act 2017 provides:

> *112.—(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 firstyear 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….

Submissions

9. The Appellant submitted that her appeal is based on the decision of the Financial Services and Pensions Ombudsman's office findings that [redacted] plc had failed to meet their contractual obligations in relation to salary protection from 1 December 2012.

10. The Appellant submitted that [redacted], in accordance with the Financial Services and Pensions Ombudsman decision, was directed to pay benefit of her salary protection scheme disability policy for the years 2013, 2014, 2015, 2016 and 2017.

11. The Appellant submitted that following the Ombudsman's decision [redacted] made a payment in January 2018.

12. The Appellant submitted evidence of the payment by [redacted] that displayed gross pay of €97,314.44 with tax and USC of €45,996.93 deducted. The payslip showed the tax basis as "month 1" and included her PPS number.

13. The Appellant submitted that tax was deducted from the payment for the years 2015, 2016 and 2017 and that this tax was deducted for all these years at the same time in January 2018.

14. The Appellant submitted that she believed [redacted] waited until February 2018 to make the payment because of the change to section 112 of the TCA 1997.

15. The Appellant submitted that she wished to have the tax liability attributable to the [redacted] payment spread out and deducted for each year 2015, 2016 and 2017.

16. The Appellant submitted that it was incorrect of the company ([redacted]) to have applied emergency tax when the conditions for emergency tax were not met.

17. The Respondent submitted that the Appellant received a lump sum payment in January 2018 of monies due for the years 2015 through 2017 under an income continuance plan.

18. The Respondent submitted that on 1 January 2018 the following change to section 112 of the TCA 1997 came into effect:

    '... the income tax for the year of assessment 2018 and subsequent years of assessment ... shall be computed on the amount of the emoluments paid to the person in the year of assessment.'

19. The Respondent submitted that the proximity of the legislative change to when the payment was made can only be described as regrettable; and the Respondent understood the Appellant's frustration under the circumstances.

20. The Respondent submitted that it is its opinion, that in accordance with the wording of the relevant legislation, '*shall be computed'* the word '*shall'* is determinative and allows it no discretion in the application of this provision.

21. The Respondent submitted therefore, that tax must be assessed on the monies received by the Appellant under her income continuance policy in the year in which the payment was received and not in the years in which it was due as requested in her appeal.

22. The Respondent submitted an extract from the Tax Appeals Commission (TAC) determination 48TACD2019 in support of its position and referred to paragraph 16 of that determination as follows:

    '*I am satisfied that there is no inherent ambiguity in the statutory wording used per Section 112 TCA 1997 as amended. It is clear from subsection 3 that the legislature*

intended that tax payments, collected under the provisions of chapter 4, Part 42 TCA 1997 (PAYE system), for tax year 2018 onwards, "shall be computed on the amount of emoluments paid to the person in the year of assessment". This means that notwithstanding that the Appellant earned certain income, subject to PAYE, in 2018, it falls to be taxed in the year that is paid to her i.e. 2019.'

23. In correspondence with the Respondent, the TAC referred to section 112 of the TCA 1997, which came into effect on 1 January 2018. The TAC asked the Respondent to identify any benefits available to the Appellant arising from the Respondent's notes for guidance in relation to S112 TCA 1997, which are available on its website. https://www.revenue.ie/en/tax-professionals/documents/notes-for-guidance/tca/part05.pdf

24. The Respondent engaged in correspondence with the Appellant which led to [redacted] making an election, for the income due in 2017 to be taxed in that year. This resulted in a refund to her of €4302.50 for 2017.

Analysis and findings

25. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In cases involving tax reliefs or exemption, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.

26. In the High Court case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at par.22 Charleton J. stated:

> '*The burden of proof in this appeals 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*'

27. I am satisfied that there is no inherent ambiguity in the statutory wording used per section 112 TCA 1997, as amended. It is clear from subsection 3 that tax payments, collected under the provisions of chapter 4, Part 42 TCA 1997 (PAYE system), for tax year 2018 onwards, *"shall be computed on the amount of emoluments paid to the person in the year of assessment".*

28. This means that notwithstanding that the Appellant was entitled to receive payments dating back over earlier years, the payment of which was made in February 2018, it falls to be taxed in the year that it was paid to her i.e. 2018.

29. In her submission to the Tax Appeals Commission, the Appellant expressed the view that the policy provider had waited until the change in section 112 TCA 1997 to make the payment to her.

30. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters, which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory, unfair, or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.

31. Accordingly, I am satisfied that it would be *ultra vires* for me to embark upon a consideration of, or to make a finding or determination in relation to, the issue of whether or not the policy provider had deliberately delayed the benefit payment to the Appellant, as argued by the Appellant. I must therefore decline to consider this argument or to make any finding in relation thereto.

32. The Tax Appeals Commission does not have jurisdiction to adjudicate on the fairness of the application of the Irish tax law and can only determine the matter in accordance with the legislation.

33. The Appellant considered that *emergency tax* was applied to the payment in February 2018. The operation of the PAYE system means that *emergency tax* is sometimes applied to payments. In the instant appeal, the issue of whether or not *emergency tax* was correctly applied has no relevance to the total tax liability due for 2018.

34. The question to be answered in this appeal is whether the Respondent is correct in refusing to allocate income paid to the Appellant in 2018 to earlier years. I find that the Appellant has consequent to correspondence between the parties to this appeal elected to have €14,613.72 treated as emoluments chargeable to tax for the year 2017 on the receipts basis of assessment.

35. The Appellant has not furnished any further sufficient information and documentation, which would allow me to conclude, on the balance of probabilities, that the Respondent's revised view (following the Appellant's election to have some of the income taxed in 2017) of the matter that excludes €14,613.72 from the assessment is incorrect. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that the Respondent's revised view in the matter is incorrect.

Determination

36. I determine that the "PAYE/USC End of Year Statement (P21) for the tax year 2018" (treated as if it were an assessment to tax raised on the Appellant), should be revised to exclude the elected amount of €14,613.72 now correctly attributable to 2017. The Appellant is not entitled to have the remainder of the payment received by her in February 2018, treated as taxable in earlier years.

37. The appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
1 FEBRUARY 2021