AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

99TACD2021

BETWEEN

THE APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant to the Tax Appeals Commission ("the Commission") against a refusal by the Revenue Commissioners ("Respondent") to treat additional pay awarded to the Appellant in 2019, but relating to earnings in the years 2013 through to 2019, as taxable in the years 2013 through to 2019. The Appellant appealed against this tax treatment of his earnings on 15th January 2020. The Appellant is employed as a post-primary teacher with the Department of Education.

2. This appeal is determined by agreement of the parties, without a hearing, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The Appellant received a payment of €19,502.40 from his employer, the Department of Education, in November 2019 in respect of back pay owing from an incremental credit he was due for the years 2013 through to 2019. The income was given to him in respect of "Relevant Non-teaching experience". The Appellant provided the Commission with a letter from the Department of Education and Skills detailing the arrears from 2013 to 2019 inclusive. Those arrears totalled €19,502.40. The Appellant received the lump sum of €19,502.40 on 7th November 2019 due to an overdue credit relating to "relevant non-teaching experience". It appears the Appellant should have received the payment each year when he entered teaching in late [redacted] and relates to income from 2013. The

Commissioner has no further details as to why it took such a period of time for this omission to come to light and for the payments to be regularised. Those details are not relevant to the Commissioner's consideration of this tax appeal but the Appellant could have a cause of action in relation to that matter if the reason for the omission or delay was as a consequence of another person or organisation's conduct and not related to his own omission. But, any further cause of action is not for the Commission or the Commissioner to consider in this determination. The Commissioner notes that the Appellant confirmed in his letter to the Commission dated 17th December 2019 that he only applied for the incremental credit in June 2018. The Commission's remit is in relation to the tax appeal and the payment of tax in this appeal only.

4. The salary payments relating to the years 2013 through to 2019 made to the Appellant were treated under the PAYE system operated by his employer as earnings in 2019. The Appellant disputes this tax treatment as he sought for the arrears payments to be spread over the years 2013 through to 2019. Such treatment, if applicable, would mean the payments would come within a lower band of tax treatment for the separate years in question and hence a lower quantum of tax would be payable. The Appellant would have been entitled to have some of the income taxable at the standard rate of income tax. It is the cumulative effect of being taxed on the lump sum in 2019 that the Appellant objects to, as the higher band of tax is reached.

5. The Respondent refused to alter the PAYE deductions as applied by the Appellant's employer. The Respondent maintained that these PAYE deductions were made on the basis that from 2018 and subsequent years, Schedule E income is chargeable on a receipts basis (i.e. when it is received) and in the year of receipt. The Appellant appealed to the Tax Appeal Commissioners on the 17 December 2019.

6. The facts are not in dispute in this appeal.

Legislation

7. Section 112 TCA 1997 as amended by Finance Act 2017 provides:

(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….(*emphasis* added)

Appellant's Submissions

8. The Appellant submitted that the income he received in 2019 was attributable to "Relevant Non-teaching experience" and that the income should have been paid to him each year from 2013.

9. The Appellant stated that he had contacted the Respondent on 16 December 2019 requesting that the income the subject of the appeal be spread over the years 2013 through to 2019. He stated that the Respondent had confirmed that it was unable to do so due to the Financial Services Act of 2018.

10. The Appellant said he would suffer financially as a result of the Respondent not spreading the income over prior years as he was not able to avail of the standard rate of tax for each of the years in question.

11. The Appellant submitted that it was unfair that that money earned from 2013 onwards was only taxable in 2019 as a lump sum. He raised that there had been a delay in receiving his incremental credit. It appears the Appellant applied for the incremental credit in June 2018.

Respondent's Submissions

12. The Respondent stated that the Appellant contacted the Respondent on several occasions in November and December 2019, objecting to the manner in which the payment made in respect of his earnings for the years 2013 through to 2019 had been taxed. The Respondent stated that it was explained to the Appellant in writing why the payment had been taxed in the manner it had been, i.e. that it was a legal requirement under section 112 TCA 1997.

13. The Respondent submitted that in the phrase '*shall be computed'* as used in section 112 TCA 1997, the word '*shall'* is determinative and allows for no discretion in the application of this provision. This means that tax must be assessed in the year a payment is received rather than the year it was due or earned.

14. Reference was made by the Respondent to the previous Tax Appeals Commission determination 48TACD2019. The Respondent noted in particular paragraph 16 of that determination where the Commissioner stated:

> *'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.'*

15. The Respondent argued that the same line of reasoning as outlined in Tax Appeals Commission determination 48TACD2019 is applicable in this appeal and hence even though the Appellant was due the income in the years 2013 through to 2019, it must be taxed in the year it was paid, which was 2019.

16. The Respondent referred to the case of *Menolly Homes Ltd v Appeal Commissioners and Revenue Commissioners* (2010) IEHC 49 and stated that the onus was on the Appellant to show that the Respondent had made some error in the way the payment he received in 2019 was taxed. However, the Respondent pointed out that all the correspondence and documentation submitted by him confirmed that while the monies making up the payment were earned between 2013 and 2019, the payment itself was received by him only in 2019. The Respondent submitted that the Appellant, therefore, far from meeting the burden of proof required, had, in fact, only further demonstrated that the Respondent has acted correctly by taxing the payment as it did.

Analysis and findings

17. 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 the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at paragraph 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'*

18. The Commissioner is satisfied that there is no inherent ambiguity in the statutory wording

used per section 112 TCA 1997 as amended. It is clear from section 112(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, from 2013 through to 2019, it falls to be taxed in the year that was paid to him i.e. 2019.

19. The statutory provision is clear. The reasons for the date of payment are not within the ambit of the Commission in this appeal. In his submission to the Commission, the Appellant expressed his sense of unfairness at the tax treatment afforded to his earnings from 2013 through to 2019. The Commissioner has sympathy with the Appellant's view and no doubt if he had received the monies in those years, less tax could have been payable. However, the jurisdiction of the Commission is confined to interpreting tax legislation, ensuring that the correct charge to tax has been made and ensuring that the correct tax is paid. There is no dispute that the €19,502.40 was paid in 2019. Hence under the statutory provisions it must be taxed in 2019. The Commission does not have the remit to determine whether a legislative provision causes unfairness against individual taxpayers based on their particular payment dates. The Commission has considered the legislation and it is clear that from 2018 any payment received is taxable in the year of receipt.

Determination

20. The Commissioner determines that the tax treatment of the tax deducted in 2019 was correct. The Commissioner determines that by virtue of section 112 of the TCA 1997 the payment had to be taxed in 2019, the year of receipt. Therefore, the appeal is denied. The Commissioner wishes to express understanding for the situation the Appellant finds himself in and he was correct to pursue an appeal to have clarity. But, the legislative provisions are clear and cannot be overturned in this appeal.

21. The appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

Marie-Claire Maney
Chairperson
Appeal Commissioner
31st May 2021