



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

175TACD2025

Between

██████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal by ██████████ (the Appellant) to the Tax Appeals Commission (“the Commission”) against an amended Statement of Liability for the 2023 tax year issued by the Revenue Commissioners (“the Respondent”) which showed a total underpayment of income tax of €4,703.98. The Appellant is jointly assessed with her husband to income tax.
2. The appeal concerned the decision of the Respondent to refuse the home carer tax credit for her husband for 2023, on the basis that he was awarded an invalidity pension from the Department of Social Protection (“DSP”) as of 1 June 2023. The Appellant’s case was that her husband did not receive payments from the invalidity pension until 2024, and that therefore it should not have been included in her 2023 assessment.

**Background**

3. The Appellant is a PAYE employee. She is jointly assessed to tax with her husband. Her husband suffered a work-related injury some years ago and has been unable to work since. The Appellant’s husband claimed home carer tax credit for 2023, on the basis that he was caring for a dependant person (their child) and his income for the year was nil.

4. In 2023, the Appellant's husband applied for an invalidity pension from the DSP. On 5 March 2024, the DSP notified the Appellant's husband that it had been decided to grant him the pension as of 1 June 2023. On 4 April 2024, the Appellant's husband was paid arrears of €7,616 for the period 1 June 2023 to 3 January 2024 in respect of his pension.
5. In May 2024, the Respondent carried out a compliance intervention on the Appellant's tax returns for 2020 to 2024. A number of amendments were made to her income tax assessments on foot of this intervention. On 9 September 2024, an amended Statement of Liability for the 2023 tax year issued to the Appellant, which showed a total underpayment of €4,703.98. The Respondent removed the home carer tax credit for the Appellant's husband, on the basis that he had been awarded an invalidity pension commencing 1 June 2023.
6. On 19 September 2024, the Appellant appealed against the amended Statement of Liability to the Commission. The appeal proceeded by way of a remote hearing in private on 24 April 2024. The Appellant attended in person, accompanied by her husband. The Respondent was represented by its officers.
7. The net question under appeal was whether the Respondent correctly assessed the Appellant to income tax in respect of her husband's invalidity pension for 2023, in circumstances where he did not receive any payments until 2024.

### **Legislation and Guidelines**

8. Section 112 of the Taxes Consolidation Act 1997 as amended ("TCA 1997") provides *inter alia* that

*"(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.*

*[...]*

*(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.*

[...]

*(6)(b) Subsection (3) shall not apply to... (ii) emoluments in respect of which a notification has issued under section 984(1)."*

9. Section 984(1) of the TCA 1997 states that

*"This Chapter shall apply to all emoluments except emoluments which are emoluments in respect of which the employer has been notified by the inspector that they are emoluments which arise from an office or employment and from which, in the opinion of the inspector, having regard to the circumstances of the office or employment or to the amount of the emoluments, the deduction of tax by reference to this Chapter is impracticable."*

10. The Respondent's Tax and Duty Manual, Part 05-01-08 provides that

**3.2 PAYE Exclusion Orders**

*The receipts basis of assessment does not apply to income in respect of which a PAYE Exclusion Order has issued. Generally, Exclusion Orders are issued in respect of non-resident employees and certain other individuals who will not have a tax liability in the State. Income which is subject to an Exclusion Order continues to be assessed on the "earned basis", i.e., the amount an individual actually earns in a year of assessment....*

**3.3 Social welfare payments**

*The Department of Social Protection holds an Exclusion Order in respect of taxable payments that it makes under the Social Welfare Acts. Consequently, all such payments continue to be assessed on the earnings basis of assessment. This addresses the situation where an accumulation of arrears is paid and could result in payments that would normally be taxed at the lower rate of tax coming into charge at the higher rate."*

**Submissions**

*Appellant*

11. In her Statement of Case, the Appellant stated that

*"I would like to clarify that my husband...did not receive any social welfare or invalidity pension payments in 2023. Although he applied for an invalidity pension on 01/06/2023, his application remained under review until 05/03/2024, with no payments made during 2023.*

*The Department of Social Protection has provided documentation verifying that he did not receive any social welfare payments [in 2023]. As he had no taxable income in 2023, he should be eligible for Carer's Tax Credit for that year..."*

12. In oral submissions at the hearing, the Appellant reiterated her position that she believed that her husband should be entitled to the home carer tax credit for 2023. She did not accept the position of the Respondent that social welfare payments are taxed on an "earnings" rather than "receipts" basis.

*Respondent*

13. In written submissions, the Respondent stated that

*"The Appellant initially claimed the Home Carer Tax Credit based on care provided for a dependant person, namely a child along with the fact that her spouse's income was nil. It is not possible to claim both the increased standard rate cut-off point for dual income couples and the Home Carer Tax Credit during the tax year. The Appellant's spouse was granted Invalidity Pension from the DSP with effect from 01/06/2023. Once this income was taken into charge the Home Carer Tax Credit was automatically removed.*

*[...]*

*It is a general principle of taxation that all income, from whatever source, is income for tax purposes and this includes amounts paid to an individual by the Department of Social Protection (DSP). The legislation governing this is in Sections 19 and 126 of the Taxes Consolidation Act (TCA) 1997.*

*For the year of assessment 2017 and prior years, the statutory basis of assessment (as set out in Section 112 of the TCA 1997) for employment income was the amount actually earned in the year regardless of whether or not the income was paid to the individual during that year of assessment. This is known as the "earnings basis" of assessment. The move to the "receipts basis" of assessment for the year 2018 and subsequent years had no effect on employers or employees, as the Finance Act 2017 amendment merely aligned, on a statutory basis, the charge to tax on the individual with the practical operation of the PAYE system.*

*However, the Department of Social Protection holds an Exclusion Order under Section 984 of the TCA in respect of taxable payments that it makes under the Social Welfare Acts. Consequently, all such payments continue to be assessed on the "earnings basis" of assessment. This addresses the situation where an accumulation of arrears*

*is paid and could result in payments that would normally be taxed at the lower rate of tax coming into charge at the higher rate.*

*Therefore, DSP payments are allocated to the periods to which they relate as opposed to when received.*

*Section 466A of the TCA 1997 provides for a tax credit of €1,950 for married couples and civil partners where one spouse or civil partner works at home to care for children, the aged, and incapacitated persons.*

*Section 466A (8) of the TCA 1997 states that a person may not avail of both the home carer's tax credit and the increased standard rate tax band for certain two earner couples (section 15(3)) but may opt for whichever is the more beneficial for a particular year.*

*The Home Carer Tax Credit was removed upon inclusion of the DSP invalidity Pension triggering an additional tax liability.”*

14. In oral submissions at the hearing, the Respondent's officers restated the Respondent's position that the home carer tax credit for 2023 was correctly removed. In response to a question from the Commissioner, the Respondent stated that the exclusion order applied to all taxable payments from the DSP, and the reason for it was to ensure that someone who was only in receipt of income from social welfare payments was not brought into the tax net for a given year in the event of receiving arrears from a previous year.

### **Material Facts**

15. The material facts were not in dispute. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:
  - 15.1. The Appellant is a PAYE worker and is jointly assessed to income tax with her husband. Her husband has been unable to work for a number of years due to an injury.
  - 15.2. The Appellant's husband claimed home carer tax credit for 2023, on the basis that he was caring for a dependent and his income was nil.
  - 15.3. On 5 March 2024, the DSP notified the Appellant's husband that he had been granted an invalidity pension from the DSP commencing 1 June 2023. He did not receive any payments under the pension until 4 April 2024, when he was paid arrears of €7,616 for the period 1 June 2023 to 3 January 2024.

15.4. The Respondent subsequently removed the home carer tax credit for 2023 and issued an amended Statement of Liability for 2023 to the Appellant on 9 September 2024 which showed a total underpayment of €4,703.98.

## **Analysis**

16. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to remove her husband's home carer tax credit for 2023. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [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.*"
17. Section 466A of the TCA 1997 provides for the granting of a home carer tax credit. In 2023 the amount of the credit was €1,700. Section 112(3) of the TCA 1997 provides that income received under Schedule E (which includes the Appellant's husband's invalidity pension) should be computed on the basis of the amount of income received by the taxpayer in a given year. However, section 112(6) states that this does not apply where a notification has issued under section 984.
18. The Respondent's Tax and Duty Manual states that the DSP holds an exclusion order in respect of taxable payments it makes, and that therefore such payments are taxed on an "earnings basis" rather than on a "receipts basis". It is not in dispute that on 5 March 2024 the Appellant's husband was informed that he had been granted an invalidity pension by the DSP, which was commenced on 1 June 2023. He did not receive any payments until 4 April 2024, when he was paid arrears of €7,616 for the period 1 June 2023 to 3 January 2024.
19. The Commissioner is satisfied that the Appellant's husband "earned" income from his pension from 1 June 2023, albeit he did not actually receive any payment until April 2024. Consequently, given the exclusion order under section 984 held by the DSP, the Respondent correctly assessed the Appellant for the payments earned by her husband in 2023, and the Commissioner determines that the amended Statement of Liability for 2023 is correct.
20. The Commissioner appreciates that this determination will be disappointing for the Appellant and her husband, who are understandably aggrieved that they have been taxed on income earned but not received by him in 2023. However, the Commissioner is satisfied that the legal position is clear, and that there is no discretion allowed to the

Respondent, or to the Commission on appeal, to disregard the relevant provisions of the TCA 1997. Therefore, the appeal is unsuccessful.

### **Determination**

21. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in taxing the Appellant and her husband on invalidity pension payments earned but not received by him in 2023, and the amended Statement of Liability for 2023 stands.
22. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK and 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

23. 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**

24. 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.



Simon Noone  
Appeal Commissioner  
29 April 2025