



49TACD2019

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the imposition of a Universal Social Charge (USC) on income of the Appellant earned in 2014 but paid in 2015. If the 2014 income had been paid in 2014, no USC would have arisen on that income as the Appellant's earnings in that year were below the threshold for paying USC.
2. The Appellant has suffered €188.42 USC within a P21 Balancing Statement for tax year 2015, issued to the Appellant on 13 April 2016, and has appealed to the Tax Appeals Commission.
3. The parties to this appeal have agreed for it to be determined without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

4. The Appellant went on maternity leave from the end of September 2014 to the end of March 2015.
5. The Appellant's employer paid the Appellant her maternity leave entitlements in February 2015, notwithstanding the fact that some of the payment related to the 2014 tax year.
6. The emoluments consisting of the payment in arrears relating to 2014 were below the USC exemption limit in 2014.
7. The combined income for 2015 including the payments for 2015 and the arrears for 2014 were higher than the USC exemption limit in that year.
8. The Appellant requested a balancing statement for 2014 and 2015.
9. The Appellant has suffered €188.42 USC within a P21 Balancing Statement for tax year 2015. This arises because the 2014 maternity pay was treated as 2015 income for USC purposes.
10. On 12 May 2016 the Appellant lodged an appeal against the balancing statement in respect of the 2014 and 2015 tax years.

Legislation

11. The legislation in relation to USC is set out in Part 18D TCA 1997. Relevant extracts are set out in Appendix 1.
12. Section 531AM (1) TCA 1997 provides that USC is charged, levied and paid on "relevant emoluments" and "relevant income" as defined in the legislation.
13. The Appellant and Respondent are not in dispute that the maternity benefits payments are "relevant emoluments" for USC calculation purposes.



14. Section 531AL TCA 1997 defines “*aggregate income for the tax year*” in relation to an individual and a tax year as the aggregate of the individual’s-

“(a) relevant Emoluments in the tax year, including relevant emoluments that are paid in whole or in part for a tax year other than the year during which the payment is made. (Emphasis added) and

(b) relevant income for the tax year.”

15. Section 531AM TCA 1997 provides for the calculation of USC on gross income without deductions for tax purposes in arriving at total income.

16. Section 531AM (2) TCA 1997 provides an exemption from USC where an individual’s aggregate income for a year of assessment does not exceed a defined threshold. This threshold was set at an amount of €12, 012 for the 2014 tax year.

17. Section 531AW TCA 1997 provides for a repayment facility where USC has been overpaid. However, the legislation does not allow for a repayment of USC which has been properly assessed.

Submissions

18. The Appellant argues that it is unfair that she is being penalised due to the fact her employer paid her some of her maternity leave entitlements late, resulting in all of the payments being liable to USC in 2015.

19. The Appellant contends that she would have had a smaller USC liability had her employer paid her maternity leave payments in a timely fashion, as her income for 2014 would have been under the 2014 threshold of €12, 012.

20. The Respondent relies on section 531AL TCA 1997 as the basis for submitting that the Appellant was correctly assessable to USC in 2015. The Respondent submits that the payment in 2015 included her 2014 arrears of maternity leave being, “*relevant*



emoluments relating to a tax year other than the year during which the payment was made”.

21. The Respondent submits that there is no recalculation or repayment procedure allowed in Part 18D TCA 1997 in relation to the Appellant’s circumstances. Accordingly, it contends that it has no legislative basis on which to repay USC to the Appellant.

Analysis and findings

22. I am satisfied that there is no inherent ambiguity in the statutory wording in S.531 AM TCA 1997 and thus the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the taxation of statutes, based on a long line of authority including *inter alia*; Revenue Commissioners v Doorley (1933) IR750, Inspector of Taxes v Kiernan (1982) ILRM 13, Cape Brandy v Inland Revenue Commissioners (1921) 1 KB 64, Texaco(Ireland) Ltd v Murphy (1991) 2 IR 449. Section 531 AM TCA clearly brings within the charge to USC payments which relate to tax years other that the year the payment is made. (Emphasis added).
23. In light of the above, I am satisfied that the Respondent is correct in imposing USC on the entire maternity leave payment in 2015, notwithstanding that this payment included arrears attributable to the tax year 2014.
24. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that he/she/it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.
25. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

“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."

26. Having considered the evidence and facts, the relevant legislation and related case law, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal.
27. The Appellant has not succeeded in establishing a legislative basis on which a right of repayment of USC exists in her circumstances.
28. I am satisfied that there is no repayment procedure provided for Part 18D TCA 1997 other than where USC is overpaid as per Section 531AW TCA 1997.
29. In her submission to the Tax Appeals Commission, the Appellant expressed her sense of unfairness at the tax treatment afforded to her 2014 earnings, the subject of this appeal. 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.

Determination

30. I determine that the Respondent correctly assessed the Appellant to USC in the tax year 2015 and that there is no legislative basis which allows for a refund of USC where USC has not been overpaid.
31. This Appeal is determined in accordance with Section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

31st October 2019



APPENDIX 1

Part 18 Taxes Consolidation Act 1997

Section 531AL Definitions

In this Part

“aggregate income for the tax year”, in relation to an individual and a tax year, means the aggregate of the individual’s—

- (a) relevant emoluments in the tax year, including relevant emoluments that are paid in whole or in part for a tax year other than the tax year during which the payment is made, and*
- (b) relevant income for the tax year;*

“Collector-General” means the Collector-General appointed under section 851;

“employee” and “employer” have the same meanings as in section 983;

“excluded emoluments” means emoluments which have been gifted to the Minister for Finance under section 483;

“income levy” has the meaning assigned to it by section 531B;

“income tax month” means a calendar month;

“inspector” means an inspector of taxes or other officer of the Revenue Commissioners;

“PAYE Regulations” means the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001);

“relevant emoluments” and “relevant income” shall be construed in accordance with paragraphs (a) and (b), respectively, of the Table to section 531AM(1);

“similar type payments” means payments which are of a similar character to social welfare payments but which are made by—

- (a) the Department of Education and Skills,*
- (b) the Department of Agriculture, Food and the Marine,*
- (c) the Health Service Executive,*
- (d) an education and training board in relation to attendance at a non-craft training course funded by An tSeirbhís Oideachais Leanúnaigh agus Scileanna,*
- (e) a sponsor in respect of participation in programmes known as the Community Employment Scheme and the Jobs Initiative Scheme, or*
- (f) any other state or territory;*

“social welfare payments” means payments made under the Social Welfare Acts;

Section 531AM Charge to universal social charge

(1) *With effect from 1 January 2011, there shall be charged, levied and paid, in accordance with the provisions of this Part, a tax to be known as “universal social charge” in respect of the income specified in paragraphs (a) and (b) of the Table to this subsection.*

TABLE

(a) *The income described in this paragraph (in this Part referred to as “relevant emoluments”) is emoluments to which Chapter 4 of Part 42 applies or is applied, including—*

(i) any allowable contributions referred to in Regulation 31 of the Income Tax Regulations,

(ii) the initial market value (within the meaning of section 510(2)) of any shares, excluded from the charge to income tax by virtue of section 510(4), appropriated in accordance with Chapter 1 of Part 17, [except where such shares were held by an employee share ownership trust, approved in accordance with Schedule 12, before 1 January 2011,

(iii) the market value (determined in accordance with section 548) of the right referred to in section 519A(1) or 519D(1),

(iv) any gain exempted from income tax by virtue of section 519A(3) or 519D(3) after such a gain is reduced by the market value of the right referred to in subparagraph (iii), and

(v) the “specified amount” as defined in section 825C,

but not including—

(I) social welfare payments and similar type payments,

(II) excluded emoluments,

(III) emoluments disregarded by an employer on the direction of an inspector in accordance with Regulation 10(3) of the PAYE Regulations.



(IV) any amount in respect of which relief is due under section 201(5)(a) and paragraphs 6 and 8 of Schedule 3,

(V) any amount transferred by an administrator under section 728A(3).

(b) The income described in this paragraph (in this Part referred to as “relevant income”) is income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts, other than—

(i) relevant emoluments,

(ii) any emoluments, payments, expenses or other amounts referred to in subparagraphs (I) to (V) of paragraph (a) of this Table,

(iii) any gains, income or payments to which any of the following provisions apply—

(I) Chapter 4 of Part 8;

(II) Chapter 5 of Part 8;

(III) Chapter 7 of Part 8;

(IV) Chapter 5 of Part 26;

(V) Chapter 6 of Part 26;

(VI) Chapter 1A of Part 27;

(VII) Chapter 4 of Part 27,

(iv) where section 825A applies in respect of an individual for a tax year, an amount equal to the difference between—

(I) the individual’s total income for the tax year had that section not applied for that year, and

(II) the amount of total income which if charged to income tax for the year would have given an amount of income tax payable equal to that which would be payable by virtue of the operation of that section,



(v) where section 1025 applies in respect of an individual, the amount of any deduction for any payment to which that section applies, made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage unless section 1026 applies in respect of such payment,

(va) where section 1031J applies in respect of an individual, the amount of any deduction for any payment to which that section applies, made by an individual pursuant to a maintenance arrangement (within the meaning of that section) for the benefit of his or her civil partner or former civil partner unless section 1031K applies in respect of such payment,

(vb) where section 1031Q applies in respect of an individual, the amount of any deduction for any payment to which that section applies, made by a qualified cohabitant pursuant to a maintenance arrangement (within the meaning of that section) for the benefit of the other qualified cohabitant,

(vi) where section 382 applies in respect of an individual carrying on a trade or profession, an amount equal to the amount referred to in section 531AU(1),

(vii) where section 272, 284, 658 or 659 applies in respect of an individual carrying on a trade or profession, an amount equal to the amount referred to in section 531AU(2), and

(viii) where section 372AP applies in respect of an individual, the amount that the individual is deemed to have received as rent in accordance with subsection (7) of that section where the individual received, or was entitled to receive, the deduction referred to in subsection (2) of that section on or after 1 January 2012,

and –

(I) as if sections 140, 141, 142, 143, 195, 232, 234 and 664 were never enacted,

(II) without regard to any deduction—

(A) in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),



- (B) *under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,*
 - (C) *under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,*
 - (D) *under section 847A, in respect of a relevant donation (within the meaning of that section), or*
 - (E) *under section 848A, in respect of a relevant donation (within the meaning of that section), and*
- (III) *including a balancing charge in respect of any amount that would have been deducted by virtue of subparagraph (vii).*

(2) Universal social charge shall not be payable for a tax year by an individual who proves to the satisfaction of the Revenue Commissioners that his or her aggregate income for the tax year does not exceed €13,000.(for 2016 and subsequent years of assessment)

Section 531AW Repayments

- (1) *In any case of underpayment or overpayment of universal social charge to the Collector-General, payment of the amount not paid or repayment of the amount overpaid, as the case may be, shall be made to or by the Collector-General, as appropriate.*
- (2) *In the case of an individual to whom section 531AM(2) applies, any universal social charge deducted from his or her income shall be repaid to the individual by the Revenue Commissioners on receipt of a valid claim made in such manner as may be approved by the Revenue Commissioners, and for the purposes of such repayment universal social charge shall be deemed to be income tax.*

