



01TACD2019

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal is concerned with the denial by the Respondent of the Appellant's claim for relief from income tax pursuant to Taxes Consolidation Act 1997 (TCA), section 1025, in respect of the full payment of spousal maintenance of €900 a month made to his former spouse for the years 2013, 2014 and 2015.

Background

2. The Appellant is separated from his former spouse, **Redacted**. They have one daughter, **Redacted**, now aged **Redacted**.
3. Judicial separation proceedings were entered into and settled by way of written terms of agreement (the Agreement) dated **Redacted**. The relevant parts of the Agreement are as follows:
 3. "An Order pursuant to Section 13 of the 1996 Act, providing for €1,500.00 to be paid each month to the Applicant [**Redacted**] by the Respondent [the Appellant], apportioned €900.00 spousal maintenance and €600.00 in respect of **Redacted** [Daughter], the €600.00 to be increased in line with Consumer Line Index each November, from the 6th of January 2013 to be paid into a nominated bank account of the Applicant.
 4. An order transferring 100% of the benefits of **Redacted** Pension Policy in the amount of €31,304.09 from the Respondent to the Applicant pursuant to Section 17 of the 1996 Act, and minimal Pension Adjustment Orders in respect of the five other Pension policies of



the Respondent in favour of the Applicant, and a minimal Pension Adjustment Order in respect of the Applicant's pension in favour of the Respondent.

5. *Cross Orders pursuant to Section 18(10) of the 1996 Act.*
6. *An order pursuant to Section 15(1)(a)(2) of the 1996 Act directing the sale of the family home at **Address Redacted** on the 18th birthday of the child **Redacted**. The parties agree to jointly nominate an Auctioneer and take his or her reasonable advices in relation to the sale. Parties to agree a Solicitor to have joint carriage of sale. The net proceeds of sale after deduction of mortgage and sale costs to be divided equally between parties.*
7. *The Applicant should assume complete responsibility for the payment of the entire mortgage and all utility and insurance expenses and maintenance of the house for routing purposes.*
8. *In the event of arrears accruing in the mortgage, due to the fault of the Applicant, it shall be deducted from the Applicant's share of proceeds of the sale.*
9. *The Applicant has the option to purchase the family home at any time prior to **Redacted's** 18th Birthday at 50% of the Net value of the house, after deduction of the mortgage amount, valuation to be agreed by the parties.*
10. *An order pursuant to Section 15(1)(a)(1) granting the Applicant an exclusive right of residence from 6th January 2013 until **Redacted** is 18.*
11. *An order pursuant to Section 14(5) of the 1996 Act directing the County registrar to sign all necessary documents as necessitated by the above provisions, if either party defaults.*
12. *All educational and medical expenses, including health insurance, of the child **Redacted** to be discharged by the Respondent until she is no longer dependent.*
13. *In the event of the Applicant purchasing the family home, interest [sic] of the Respondent pursuant to Point 9 above, the maintenance in respect of the Applicant only to cease."*
4. *By clause 3 of those terms the Appellant agreed to make monthly maintenance payments of €1,500 to his former spouse of which €600 was for the maintenance of his daughter and the balance of €900 as spousal maintenance.*
5. *The Appellant claimed a tax deduction for the full amount of the spousal maintenance of €900 per month for the years 2013, 2014 and 2015. The Respondent disallowed 50% of that payment on the basis that the Appellant was deriving a benefit as the spousal payment assists in the payment of the mortgage on a property in which the Appellant retains a 50% interest.*



6. The Appellant contends that he is entitled to tax relief on the full amount of the spousal maintenance payment.

Legislation

Taxes Consolidation Act

7. TCA, section 1025 provides, *inter alia*, that payments made under a maintenance arrangement by one party to a marriage to the other party of that marriage will be payable without deduction of tax, deductible in computing the total income of the payer and be chargeable to income tax in the hands of the recipient.
8. However, maintenance payments specifically for the benefit of children remain the income of the payer. No deduction is due in respect of such payments and the recipient is not taxable on such payments.
9. Subsection 1 provides the following definitions:

““maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of –

(a) the dissolution or annulment of a marriage, or

(b) such separation of the parties to a marriage as is referred to in section 1015(2),

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;”

10. Subsection 2 states:

(a) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for the benefit of his or her child, or for the benefit of the other party to the marriage, being payments –

(i) which are made at a time when the wife is not living with the husband,



- (ii) *the making of which is legally enforceable, and*
- (iii) *which are annual or periodical;*

(b) For the purposes of this section and of section 1026 but subject to paragraph (c), a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person."

11. Subsection 3 prescribes the tax treatment where payment is for benefit of the recipient spouse:

"Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage –

- (a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,*
- (b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and*
- (c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.*



12. Subsection 4 sets out the tax treatment where payment is for benefit of child and states:

“Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child –

- (a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,*
- (b) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,*
- (c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and ..”*

Evidence

13. The facts were not in dispute between the parties.

Submissions

Appellant

14. The Appellant submitted that the Respondent has misinterpreted the provisions of TCA, section 1025(2)(b). The Appellant claimed that no restriction should be imposed on the full amount of the monthly spousal payment of €900 notwithstanding that the Appellant was deriving a benefit to the extent that the Appellant’s former spouse was discharging the mortgage in a property in which he retained a 50% interest.
15. The Appellant submitted that the mortgage repayments on the ‘family home’ during the years under appeal was approximately €10,000 per annum or €833 per month whereas he was paying €1,500 per month on rented accommodation. As such the significant cost of renting a property was ameliorated for the former spouse.
16. The Appellant argued that the former spouse has discretion in how the spousal maintenance payment should be expended notwithstanding the provision in the Agreement that requires a reduction in her share of the proceeds from sale of the ‘family home’ in the event that the former spouse defaults in the mortgage payments.



17. Finally, The Appellant highlighted that the former spouse has income in her own right.

Respondents

18. The Respondent submitted that as the former spouse pays the full mortgage payments to include the half of the mortgage payments due by the Appellant, the spousal maintenance payment deduction should be restricted by 50%.

Analysis

19. TCA, 1025(2) is a deeming provision which treats the payment made by one party to a marriage under a *“maintenance arrangement relating to the marriage”* other than a payment from which *“neither the child of the party to the marriage making the payment nor the other party to the marriage derives any benefit”* to be for the benefit of the recipient.

20. In this context, the former spouse is in receipt of €900 per month in spousal maintenance. However, and contrary to the Appellant’s submission, it is clearly evident from Clause 13 of the Agreement that the spousal maintenance payment is directly linked to the former’s spouse’s obligation to discharge the mortgage to the extent that the Appellant’s obligation to make the spousal payment ceases in the event that the former spouse purchases the Appellant’s share in the *‘family home’*. Notwithstanding that provision, the former spouse has derived a benefit to the extent that she retains exclusive possession and occupation of the *‘family home’* and the Appellant’s financial contribution directly assists in the enjoyment and occupation of the property. The Appellant’s financial contribution also increases her share in the equity value in the property and as a consequence a benefit is derived.

21. Furthermore TCA, section 1025(2) is not drafted in the way suggested by the Respondent to deprive the Appellant of an entitlement to a deduction for the full amount of the spousal payment notwithstanding that the Appellant is deriving a benefit with reference to the reduction in the mortgage debt on the *‘family home’* payable by the former spouse. To interpret the provision in such a manner would be transgressing into the role of law making contrary to the Constitutional scheme.

22. Therefore, the deeming provision within TCA, section 1025(2) is specific to the extent that where the other party to the marriage derives any benefit, that person is deemed to be the recipient of the payment. (Emphasis added). Therefore, the statutory



inclusion of the adjective '*any*' to describe the noun '*benefit*' places a low ceiling on the quantum or nature of the benefit received. Furthermore, there is no statutory impediment to deny the Appellant's entitlement to the deduction once his former spouse is deriving a benefit. It therefore is irrelevant that the Appellant is also deriving a benefit.

23. In this regard, the provisions of TCA, section 1025(3) apply to the full spousal maintenance payment of €900 per month and as a consequence, those payments can be paid without deduction of tax. Furthermore, those payments are deductible in computing the total income of the Appellant.

Conclusion

24. Based on a consideration of submissions together with a review of the facts and documentation, I have determined that the Appellant is entitled to claim a deduction for the full monthly spousal maintenance of €900 paid to his former spouse and the assessments for the years 2013, 2014 and 2015 should be reduced accordingly.
25. This appeal is therefore determined in accordance with TCA, section 949AK.

Conor Kennedy
Appeal Commissioner
20th November 2018

No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.

