



48TACD2019

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a refusal by the Respondent to treat salary payments made to the Appellant in 2019, but relating to earnings in 2018, as taxable in 2018.
2. This appeal is determined, without a hearing, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ("TCA 1997").

Background

3. The Appellant is a PAYE taxpayer, working for both years 2018 and 2019. The Appellant was on a career break of one year from August 2017 and returned to her employment in late August 2018.
4. On January 10th 2019 the Appellant was paid for working dates December 3rd - December 7th 2018. On January 24th 2019, the Appellant was paid two weeks relating

to 2018; for working dates December 10th - December 14th 2018 and for December 17th - December 21st.

5. These salary payments relating to 2018 made to the Appellant were treated under the PAYE system operated by her employer, as earnings of 2019.
6. The Appellant disputes this as she wishes to have these three weeks of salary treated as taxable in 2018. Such treatment, if applicable, would attract a lower quantum of tax as the Appellant had a full year of tax credits to off-set a partial year's earnings in 2018, due to her career break.
7. The Respondent has refused to alter the PAYE deductions, applied by the Appellants employer. The Appellant appealed to the Tax Appeal Commissioners on the 19 February 2019.
8. The material facts are not in dispute in this appeal.

Legislation

9. 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 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....

Appellant's Submissions

10. The Appellant has provided the following evidence:

"Due to the fact that I had not been earning any income at all in 2018 until I started working at the end of August 2018, my 4 months of salary should have been almost tax free. On phoning Revenue in September 2018, I was assured by one of their employees on a phone call that my 4 months of salary that I would earn from the end of August 2018 - end of December 2018 should see very little tax and to enjoy it as in 2019 I would be starting a new tax year.

My P35 only shows earnings for 2018 up until the end of November, which is incorrect as I had worked for 3 full weeks in December 2018 also, so these should be shown in my end of year paperwork for 2018.

Revenue also admit errors in information given to me on the telephone - "Ms Appellant phoned Revenue's PAYE enquiry line on 11th and 12th February 2019 enquiring about the refund she was entitled to. On both occasions she was advised that we would need an amended P35 form for 2018 from her employer amending her pay for 2018 before we could determine if a refund was due. This information was not correct, an amended P35 form is not required or appropriate."

Revenue admitted to me on these various phone calls, whilst I was speaking with different employees, that I was indeed entitled to a refund if I could get the P35 amended. My employer agreed with me also in relation to the refund and although they said they were unable to amend a P35 that they would issue me with a letter and corresponding payslips ...show that those 3 weeks of pay were indeed related to 2018. ..."

Respondent's Submissions

11. In a Statement of Case, submitted to the Tax Appeal Commission, the Respondent confirmed that the information supplied to Appellant when she phoned Revenue's PAYE enquiry line on 11th and 12th February 2019 enquiring about the refund she was entitled to; to the effect that she would need an amended P35 form for 2018 from her employer amending her pay for 2018 before Revenue could determine if a refund was due; that *"This information was not correct, an amended P35 form is not required or appropriate."*

12. The Respondent further stated:

"Ms. Appellant phoned ... on the 15th and 17th February and 17 April 2019. On these occasions she was advised there was nothing we could do and the payments had to go through payroll in 2019, that the income is taxable on a receipts basis. This information is correct."

13. The Respondent further states:

"The Finance Act 2017 amended Section 112 of the Taxes Consolidation Act 1997. Therefore, for the year of assessment 2018 and subsequent years, the statutory basis of assessment for employment income is the actual amount of income received (paid to the employee) in the year of assessment i.e. the "receipts basis".

The salary payments made to Ms. Appellant in January 2019 by her employer have therefore been correctly taxed and no refund arises in respect of the payments which referred to December 2018"

Analysis and findings

14. 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.

15. 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’

16. 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.

17. In her submission to the Tax Appeals Commission, the Appellant expressed her sense of unfairness at the tax treatment afforded to her 2018 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

18. I determine that the Appellant is not entitled to have her December 2018 earnings paid to her in 2019, treated as taxable in 2018.



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

PAUL CUMMINS
APPEAL COMMISSIONER
31st October 2019.