

## CASE SUMMARY

# TRA finds disputant to be in a de facto relationship and upholds Commissioner's WfFTC assessments

Decision date: 17 October 2023

CSUM 23/04

## CASE

**TRA 005/21 [2023] NZTRA 1**

## LEGISLATIVE REFERENCES

Income Tax Act 2007, ss CB 32, MC 4, MC 7, MC 8, MC 11, YA 1 meaning of "de facto partner"

Legislation Act 2019, ss 13 and 14

Interpretation Act 1999, ss 4, 29 and 29A

Tax Administration Act 1994, ss 6 and 6A

## LEGAL TERMS

De facto relationship; nature of marriage; working for families tax credits; entitlement

## DATE(S) HEARD

4 and 5 April 2022.

## Summary

The Taxation Review Authority (the **TRA**) upheld the Commissioner's assessments of the disputant's entitlement to Working for Families Tax Credits (**WfFTC**) at nil for each of the income years in dispute.

The disputant claimed WfFTC for the 2015 to 2018 income years on the basis she was a single parent. However, the Commissioner considered that the disputant was in a de facto relationship during the income years in dispute and so her partner's income should have been included as part of her family scheme income for WfFTC purposes. The effect of including the partner's income was that the disputant's entitlement to WfFTC was nil.

## Impact

This decision considers the meaning of "de facto relationship" in the context of WfFTC.

## Facts

The disputant claimed WfFTC in the 2015 to 2018 income years on the basis that she was a single parent. However, the Commissioner considered that she was in a de facto relationship with Mr X during those years and assessed the disputant's WfFTC entitlement to nil.

Reasons for why the Commissioner considered the disputant was in a de facto relationship included that she shared a residence with Mr X, there was financial interdependence between them, they holidayed together, Mr X described his marital status as de facto and listed the disputant as his next of kin contact.

The disputant was also found to have stolen funds from her employer in the 2016 to 2018 income years. If the disputant was considered not to have been in a de facto relationship, the Commissioner's position was that she would have had a reduced or nil entitlement to WfFTC.

## Issues

The determinative issue for the TRA to consider was whether the disputant was in a de facto relationship that required her partner's income to be taken into account for the purposes of WfFTC.

If it was found that the disputant was not in a de facto relationship, two further issues for consideration were:

- The periods in which the stolen money is taken into account (the disputant's contention was that it should be attributed to 37 weeks of the relevant income years).
- Whether the disputant's gambling addiction should, on a discretionary basis, allow her to retain the WfFTC, if she was otherwise not entitled to it.

## Decision

The TRA found that the disputant was in a de facto relationship which meant that Mr X's income had to be taken into account for the purposes of WffTC.

The TRA acknowledged that the Commissioner had pointed to contemporaneous written records that showed the disputant was in a de facto relationship with Mr X, including that they were living at the same address, they were financially interdependent, and presented themselves as a couple.

The disputant and Mr X sought to explain their relationship in terms of ties in a social group and family, that they did not live together and have never had a relationship in the nature of marriage. In response to evidence of cohabitation, an explanation was given that Mr X used the disputant's basement as a workshop and Mr X lived at a different address with his children and grandchildren. They also said they did not share money.

The TRA was not convinced by the evidence given by the disputant, Mr X and the disputant's sister. The TRA considered that neither the disputant nor Mr X could explain why the Mr X created a systematic record that was inconsistent with him and the disputant being in a relationship, and to a lesser extent, the disputant doing that too. The TRA commented that he could not place reliance on the evidence given as it could not explain the evidence of their conduct at the time.

The TRA addressed the evidence given by the disputant's sister and considered that her evidence could go no way to explaining the discrepancies between the contemporaneous materials and the explanations from the disputant and her partner.

In relation to the disputant's argument that stolen funds should only be attributed to 37 weeks of the relevant income years, the TRA considered that the effect of s CB 32 of the Income Tax Act 2007 meant that whatever year property was obtained is the tax year to which it is allocated. There is no scope for an argument that it is allocated to particular weeks as the disputant contended.

In relation to the issue of whether the Commissioner or the TRA should excuse the disputant for her liability in whole or in part on a discretionary basis, the TRA acknowledged that the Commissioner has some discretion under sections 6 and 6A of the Tax Administration Act 1994 in relation to tax collection but said that it is not a general discretion to relieve taxpayers of the liabilities imposed by the Tax Acts. Further, the TRA considered that the disputant's circumstances to be far from justifying the exercise of such discretion stating that a taxpayer who has stolen money to gamble cannot expect to be relieved of tax consequences that would apply to another taxpayer in otherwise identical circumstances.

## About this document

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