



Between

118TACD2023

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ████████████████████ (“the Appellant”) against the refusal by the Revenue Commissioners (“the Respondent”) to grant relief under the Special Assignee Relief Programme (“SARP”) to the Appellant, in accordance with the provisions of section 825C TCA 1997.
2. The claim for relief under SARP was refused by the Respondent on the grounds that the Appellant did not submit Form SARP 1A to the Respondent within 90 days of the Appellant’s arrival in the State. Consequently, the Appellant failed to meet the qualifying condition pursuant to Section 825C (2A)(e) TCA 1997.
3. On 4 May 2022, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is determined without a hearing.

Background

4. On 5 April 2022, the Appellant relocated to Ireland internally with his Employer [REDACTED] [REDACTED] from [REDACTED] at the request of his Employer. Before relocating to Ireland, the Appellant was working with same Employer [REDACTED] in [REDACTED] for more than two and a half years.
5. On 2 September 2022, the Appellant lodged his Form SARP 1A, via the Respondent's "My Enquiries" online portal, in order to make a claim for SARP relief. The date of the Appellant's arrival in the State was listed on the Form SARP 1A as 5 April 2022. In addition, the Form SARP 1A was signed/certified by the Appellant's employer on the 1 September 2022.
6. On 5 September 2022, the Respondent wrote to the Appellant, via the Respondent's "My Enquiries" online portal, to state that his claim for SARP relief was refused on the basis that the submission date was outside the 90 day time limit, in accordance with section 825C(2A)(e) TCA 1997.
7. In response, on 5 September 2022, the Appellant corresponded with the Respondent, via the Respondent's "My Enquiries" online portal, to state that he understood that his application was not submitted within the requisite time frame, but that there were a number of reasons for the delay in submitting the form, namely:
 - (a) He was not aware of the time limit and he was not informed of same by his employer;
 - (b) He had to travel back to [REDACTED] immediately after arriving in Ireland for a few weeks due to an emergency;
 - (c) Following the Appellant's return to Ireland, he had COVID symptoms and undertook a precautionary self-isolation period.
8. On 6 September 2022 the Respondent corresponded with the Appellant, via the Respondent's "My Enquiries" online portal, explaining that no concessionary measures could be allowed in this case. On the same date in response, the Appellant enquired if a letter from his employer would support his application. The Respondent duly responded to state that that a letter from the Appellant's employer would have no impact on the decision of the Respondent to refuse the Appellant's claim for SARP relief and the Appellant was provided with contact details of the Commission, in order to appeal the decision of the Respondent.
9. On the 8 September 2022, the Appellant contacted the Personal Division Access Officer requesting assistance with his case. On the same date, the Personal Division Access Officer responded to the Appellant explaining that the role of an Access Officer was to

assist persons with a disability who were having difficulty accessing the Respondent's services and that the Appellant's enquiry did not fall into this category. The Appellant responded again to enquire if any exceptions could be made in his case. However, the Access Officer stated that the Respondent's decision on the matter to refuse his claim for SARP relief was final and information relating to the Appellant's right to appeal to the Commission was furnished to the Appellant.

10. On 30 September 2022, the Appellant duly appealed to the Commission.

Legislation and Guidelines

11. The legislation relevant to this appeal is as follows:-

12. Section 825C TCA 1997, Special relief assignee programme, *inter alia* provides:-

(1) In this section—

“relevant employer” means a company that is incorporated, and tax resident, in a country or jurisdiction with the government of which arrangements are for the time being in force by virtue of subsection (1) or (1B) of section 826

“relevant employment”, in relation to a relevant employee, means an employment held by the relevant employee with a relevant employer;

(2A) In this section, in the case of an individual who arrives in the State in any of the tax years 2015 to 2022, 'relevant employee' means an individual -

(a) who for the whole of the 6 months immediately before his or her arrival in the State was a full time employee of a relevant employer and exercised the duties of his or her employment for that relevant employer outside the State,

(b) who arrives in the State at the request of his or her relevant employer to -

*(i) perform in the State duties of his or her employment for that employer,
or*

(ii) to take up employment in the State with an associated company and to perform duties in the State for that company,

(c) who performs the duties referred to in paragraph (b) for a minimum period of 12 consecutive months from the date he or she first performs those duties in the State,

(d) who was not resident in the State for the 5 tax years immediately preceding the tax year in which he or she first arrives in the State for the purposes of performing the duties referred to in paragraph (b), and

(e) in respect of whom the relevant employer or associated company certifies, in such form as the Revenue Commissioners may require, within 90 days from the employee's arrival in the State to perform the duties referred to in paragraph (b), that the individual complies with the conditions set out in paragraphs (a), (b) and (c).

Submissions

Appellant

13. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in his Notice of Appeal and Statement of Case:-

13.1. On 5 April 2022, the Appellant relocated to Ireland internally with his Employer [REDACTED] from [REDACTED] at the request of his Employer. Before relocating to Ireland, the Appellant was working with same Employer [REDACTED] in [REDACTED] for more than two and a half years.

13.2. On 2 September 2022, the Appellant lodged his Form SARP 1A, via the Respondent's "My Enquiries" online portal, in order to claim SARP relief. The date of the Appellant's arrival in the State was listed on the Form SARP 1A as 5 April 2022. In addition, the Form SARP 1A was signed/certified by the Appellant's employer on the 1 September 2022.

13.3. The Appellant was unaware of the 90 day timeline prescribed by section 825C (2A)(e) TCA 1997 and was not informed of same by his employer until end of August 2022. Once the Appellant became aware of his entitlement to claim SARP relief, on 2 September 2022, he duly lodged his Form SARP 1A, via the Respondent's "My Enquiries" online portal, to claim SARP relief.

13.4. In response, on 5 September 2022, the Appellant corresponded with the Respondent, via the Respondent's "My Enquiries" online portal, to state that he understood that his application was not submitted within the permitted time frame, but that there were a number of reasons for the delay namely:

(a) He was not aware of the time limit and he was not informed of same by his employer;

- (b) He had to travel back to [REDACTED] immediately after arriving in Ireland for a few weeks due to an emergency;
- (c) Following the Appellant's return to Ireland, he had COVID symptoms and undertook a precautionary self-isolation period.

13.5. The Appellant has suffered a huge impact as a result of the Respondent's refusal of his claim for SARP relief and other benefits linked to this relief, in circumstances where he states taxes are high in Ireland. The Appellant has relocated here with his family and children and he states it is already expensive for him and his family. The Appellant requests that the decision of the Respondent is reconsidered.

Respondent

14. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case and Outline of Arguments:

- 14.1. On 2 September 2022, the Respondent received a Form SARP 1A from the Appellant to claim SARP relief. The date of the Appellant's arrival in the State was listed on the Form SARP 1A as 5 April 2022.
- 14.2. On the 1 September 2022, the Form SARP 1A was signed by the Appellant's employer. The Form SARP 1A was certified by the Appellant's employer, 149 days from the date of the Appellant's arrival in the State.
- 14.3. On 5 September 2022, the Respondent wrote to the Appellant, via the Respondent's "My Enquiries" online portal, to state that his claim for SARP relief was refused, on the basis that the submission date was outside the 90 day time limit, in accordance with the provisions of section 825C (2A)(e) TCA 1997.
- 14.4. In response, on 5 September 2022, the Appellant corresponded with the Respondent, via the Respondent's "My Enquiries" online portal, to state that he understood that his application was not submitted within the permitted time frame, but that there were a number of reasons for the delay namely:
 - (a) He was not aware of the time limit and he was not informed of same by his employer;
 - (b) He had to travel back to [REDACTED] immediately after arriving in Ireland for a few weeks due to an emergency;

- 14.5. On 6 September 2022 the Respondent corresponded with the Appellant, via the Respondent's "My Enquiries" online portal, explaining that no concessionary measures could be allowed in his case. In response on the same date, the Appellant enquired if a letter from his employer, to state that he was unaware of the time limit and that his employer did not inform him of this would support his application. The Respondent duly responded to state that that a letter from the Appellant's employer would have no impact on its decision to refuse the Appellant's claim for SARP relief and the Appellant was provided with contact details of the Commission, in order to appeal the decision of the Respondent.
- 14.6. On the 8 September 2022, the Appellant contacted the Personal Division Access Officer requesting assistance with his case. On the same date in response, the Personal Division Access Officer responded to the Appellant explaining that the role of the Access Officer was to assist persons with a disability who were having difficulty accessing the Respondent's services and that the Appellant's enquiry did not fall into this category. The Appellant responded to enquire if any exceptions could be made in his case. However, the Access Officer duly responded to state that the Respondent's decision on the matter to refuse his claim for SARP relief was final.
- 14.7. On 10 September 2022, the Appellant contacted the Respondent to state that his actual date of arrival in the State was the 18 June 2022. Whilst the Appellant's employment had commenced on 5 April 2022, the Appellant enquired if he could resubmit his application with this change of date.
- 14.8. On 12 September 2022, the Respondent wrote to the Appellant stating that whilst, the change of date would bring the application inside the 90 day time limit, by taking up the employment and performing the duties of employment prior to arrival in the State, this would breach the qualifying condition set out in section 825C (2A)(a) TCA 1997 which states that a relevant employee means an individual "*who for the whole of the 6 months immediately before his or her arrival in the State was a full time employee of a relevant employer and exercised the duties of his or her employment for that relevant employer outside the State*".
- 14.9. A relevant employer is defined in section 825C TCA 1997 as "*a company that is incorporated, and tax resident, in a country or jurisdiction with the government of which arrangements are for the time being in force by virtue of subsection (1) or (1B) of section 826*". As the Appellant's employer was not a "relevant employer" prior to his arrival in the State, the Appellant does not qualify for SARP relief.

14.10. While empathising with the Appellant's position the legislation is clear and the Appellant does not meet the legislative requirements to qualify for SARP relief.

Material Facts

15. Having read the documentation submitted in this appeal, the Commissioner makes the following findings of material fact:

15.1. On 5 April 2022, the Appellant relocated to Ireland internally with his Employer. Before relocating to Ireland, the Appellant was working with same Employer, for more than two and a half years.

15.2. On 2 September 2022, the Respondent received a Form SARP 1A from the Appellant to claim SARP relief.

15.3. The date of the Appellant's arrival in the State was listed on the Form SARP 1A as 5 April 2022.

15.4. On the 1 September 2022, the Form SARP 1A was signed and certified by the Appellant's employer.

15.5. The Form SARP 1A was certified by the Appellant's employer, 149 days from the date of the Appellant's arrival in the State.

Analysis

16. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 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".

17. The Appellant's appeal relates to the refusal by the Respondent to grant relief to the Appellant under the SARP, in accordance with the provisions of section 825C TCA 1997. The Respondent denied the claim for relief on the basis that the application was received by the Respondent "*outside the 90 day legislative time limit stated...to enable the Appellant to qualify as a "relevant employee" for SARP relief*". Therefore, the Commissioner must

consider the requirements of section 825C (2A)(e) TCA 1997 in relation to the Appellant's appeal.

18. The Commissioner notes that it is accepted by the Appellant that his claim for SARP relief was made outside of the 90 day legislative time limit, but that there are a number of reasons why the Appellant did not submit his Form SARP 1A within the appropriate time frame prescribed, *inter alia*, that both the Appellant and his employer were unaware of the legislative requirements relating to the 90 day time limit, in accordance with the provisions of section 825C (2A)(e) TCA 1997.

19. In relation to the approach that the Commissioner is required to take in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the judgment of Kennedy CJ in *Revenue Commissioners v Doorley* [1933] I.R. 750 ("Doorley") at page 765 wherein he held that:

"The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person is to be subject to taxation unless brought within the letter of the taxing statute, that is...as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament."

20. In addition, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("Perrigo") at paragraph 74:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning;

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected;

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible".

21. The Commissioner is satisfied that the approach to be taken in relation to the interpretation of section 825C (2A)(e) TCA 1997 is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. The Commissioner notes that the Appellant is being provided with a relief or exemption from tax. Hence, the Commissioner is reminded of principles set out in paragraph 74, subparagraph (a) to (g), as referred to above in *Perrigo*.
22. With the aforementioned approach in mind the Commissioner has considered section 825C (2A)(e) TCA 1997. The Commissioner is satisfied that the words of the statutory provision are plain and their meaning is self-evident. The section provides for a “relevant employee” who must meet a number of conditions, *inter alia* that the employer makes a certification within 90 days of an employee’s arrival in the State. The operative words of the section state that “*in respect of whom the relevant employer or associated company certifies.... within 90 days from the employee's arrival in the State*”.
23. The Appellant’s submission is that he arrived in the jurisdiction on 5 April 2022 and commenced employment. The Commissioner has reviewed the Form SARP 1A submitted in this appeal and it is plain to see that the Appellant’s employer certified the Form SARP 1A on 1 September 2022, a date outside the 90 day period afforded under the legislative provisions.
24. The Appellant accepts that he did not make a claim for SARP relief within the 90 day legislative time limit, but that there are a number of reasons why the Appellant did not submit his Form SARP 1A within the appropriate time frame prescribed, including that both the Appellant and his employer were unaware of the legislative requirements relating to the 90 day time limit, in accordance with section 825C (2A)(e) TCA 1997. The Commissioner has considered the aforementioned reasons proffered by the Appellant as set out in paragraph 13.4 of this determination.
25. Moreover, the Commissioner observes the Respondent’s submission that “*on 10 September 2022, the Appellant contacted the Respondent to state that his actual date of arrival in the State was the 18 June 2022. Whilst the Appellant’s employment had commenced on 5 April 2022, the Appellant enquired if he could resubmit his application with this change of date*”. The Commissioner notes that such an amendment may well have the effect of bringing the Appellant within the 90 day statutory timeframe in accordance with section 825C(2A)(a) TCA 1997. Nevertheless, the Commissioner is satisfied that the result of such an amendment is that the Appellant would fail to satisfy the requirements in accordance with section 825C (2A)(a) TCA 1997, which states that a relevant employee means an individual “*who for the whole of the 6 months immediately*

before his or her arrival in the State was a full time employee of a relevant employer and exercised the duties of his or her employment for that relevant employer outside the State".

26. The Commissioner is satisfied that the Appellant meets the conditions of section 825C (2A) TCA 1997, but for the requirement that his *"relevant employer or associated company certifies.... within 90 days from the employee's arrival in the State"*, in accordance with the provisions of section 825C (2A)(e) TCA 1997.
27. The Commissioner has every sympathy for the Appellant and the circumstances in which he finds himself, having regard to the 90 day time limit. It seems to the Commissioner that both the Appellant and his employer were unaware of his entitlements on his arrival into the jurisdiction, and as a consequence he is denied the right to claim an exemption to tax, having taken up employment in this jurisdiction.
28. The Finance Act 2012 introduced section 825C TCA 1997 and the section provides income tax relief for certain individuals to work in the State. The Commissioner has considered the Oireachtas debates in relation to the introduction of said relief and is satisfied that the aim or intention of the relief is to reduce the cost to employers of assigning skilled individuals in their companies from abroad to take up positions in the Irish-based operations of their employer or an associated company, thereby facilitating the creation of jobs and the development and expansion of businesses in Ireland.
29. The Commissioner observes that during the Covid-19 pandemic the Respondent offered a concession in relation to time limit. In this regard the Commissioner has considered the Respondent's Tax and Duty Manual 34-00-10, wherein at page 17 it states:
- "In light of the unique circumstances arising due to COVID-19, the 90-day employer filing obligation was extended in March 2020, to afford employers a further 60 days to file this form. In exceptional cases, and on a request basis, a further extension was permitted. This concessionary measure ceased to apply on 31 December 2020. From 1 January 2021, all SARP 1A forms must be filed within the 90-day timeframe in the usual manner"*
30. Whilst there may have been concessional extensions granted by the Respondent to filing deadlines for the year 2020, as set out above, the Commissioner does not have jurisdiction to consider the manner in which the Respondent operates a non-statutory or extra-statutory concession.
31. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly*

Homes Ltd. v The Appeal Commissioners [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577, is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings.

32. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, or disproportionality, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.
33. The Commissioner has no authority or discretion to direct that a claim for SARP relief is afforded to the Appellant, where the claim for relief falls outside the 90 day time limit specified in section 825C (2A)(e) TCA 1997. In addition, the wording of the provision does not provide for extenuating circumstances in which the 90 day time limit might be mitigated.
34. The Commissioner is satisfied that section 825C (2A)(e) TCA 1997 is prescriptive in its nature and that, as this is an exemption to tax, the Appellant must bring himself directly within the requirements of the legislative scheme. The Commissioner is mindful of the dicta of Kennedy C.J. in the Supreme Court in *Doorley*, as set out above in the decision of *Perrigo*, wherein he states that:
- “The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*
35. As aforementioned, in an appeal before the Commission, the burden of proof rests on the Appellant. Having regard to the submissions and applicable legislation in relation to this appeal, the Commissioner determines that the Appellant has failed in his appeal and the Respondent was correct to refuse the Appellant’s claim for SARP relief, in circumstances where he does not satisfy the legislative requirements for same, namely section 825C (2A)(e) TCA 1997.

Determination

36. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and that the Respondent was correct to refuse the claim for SARP relief.
37. The Commissioner has every sympathy for the Appellant in the circumstances and appreciates that this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.
38. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.


Claire Millrine
Appeal Commissioner
13th July 2023